

No. 75097

SUPREME COURT OF NEVADA

JAVAR ERIS KETCHUM,
Appellant,

vs.

STATE OF NEVADA,
Appellee,

Electronically Filed
Jan 15 2019 11:33 a.m.
Elizabeth A. Brown
Clerk of Supreme Court

District Court Case No.

C-16-319714-1

DEFENDANT-APPELLANT'S REPLY BRIEF APPENDIX

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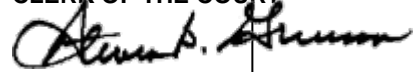
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CERTIFICATE OF SERVICE

I hereby certify that on January 15, 2019, I electronically filed the foregoing Defendant-Appellant's Corrected Reply Brief Appendix with the Clerk of the Supreme Court of Nevada, which in provides service to all registered parties.

_____/s/ Melody Phommaly_____
An Employee of Wooldridge Law



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EIGHTH JUDICIAL DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

vs.

JAVAR ERIS KETCHUM,

Defendant.

Case No.: C-16-319714-1

Dept. XVII

MOTION FOR NEW TRIAL

COMES NOW the Petitioner, JAVAR ERIS KETCHUM (hereinafter, “Mr. Ketchum”), by and through his undersigned counsel, Nicholas M. Wooldridge, of the law firm of Wooldridge Law Ltd., and pursuant to and pursuant to N.R.S. § 176.515(4) requests that this Court grant him a new trial.

This Motion is made pursuant to NRS § 176.515(4), and is based upon all the papers and pleadings on file herein, and the following Memorandum of Points and Authorities.

1 DATED this 2nd of June, 2017.

JAVAR ERIS KETCHUM,
by his attorney,

3
4 /s/ Nicholas M. Wooldridge

5 Nicholas M. Wooldridge, Esq.
6 Wooldridge Law Ltd.
7 400 South 7th Street, 4th Floor
8 Las Vegas, NV 89101
9 nicholas@wooldridgelawlv.com
(702) 330-4645 Tel.
(702) 359-8494 Fax.

10 **NOTICE OF MOTION**

11 TO: STATE OF NEVADA, Plaintiff; and

12 TO: DISTRICT ATTORNEY, its attorneys:

13
14 **PLEASE TAKE NOTICE** that the undersigned will bring the foregoing Motion for
15 New Trial for hearing in the above-entitled Court on (day) 13th of (month) June,
16 2017 in Department XVII at (time) 8:30 a m.

17 Dated this 2nd day June, 2017.

18 JAVAR ERIS KETCHUM,
19 by his attorney,

20
21 /s/ Nicholas M. Wooldridge

22 Nicholas M. Wooldridge, Esq.
23 Wooldridge Law Ltd.
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25 Las Vegas, NV 89101
26 nicholas@wooldridgelawlv.com
27 (702) 330-4645 Tel.
28 (702) 359-8494 Fax.

MEMORANDUM OF POINTS AND AUTHORITIES

I. PRELIMINARY STATEMENT

The charges alleged in the Indictment arise from the September 25, 2016 shooting of Ezekiel F. Davis outside the Top Knotch Apparel on the 4200 block of South Decatur Boulevard. The State of Nevada charged Mr. Ketchum in a five (5) count Indictment together with co-defendants Antoine Bernard, Roderick Vincent, and Marlo Chiles as follows: (1) one count of murder with a deadly weapon; (2) one count of robbery with use of a deadly weapon; and (3) three counts of accessory to murder. Mr. Ketchum was only charged in the first two counts of the Indictment. Jury trial began on May 23, 2017 and the jury returned a verdict of guilty on both counts on May 26, 2017.

This motion pursuant to N.R.S. § 176.515 is the result of the Court's evidentiary rulings regarding the admissibility of Ezekiel Davis' prior bad acts and the ability of Mr. Ketchum to present his theory of the case, namely, self-defense.¹

This Court precluded the defendant from offering evidence of Ezekiel Davis' prior robbery convictions and robbery related offenses. These offences involved a similar factual scenarios and *modus operandi* where Ezekiel Davis accosted his robbery victims outside in parking lots and eventually robbed or attempted to rob them; this was similar to the facts as alleged by Mr. Ketchum when he took the stand. Specifically, Mr. Ketchum testified that he was aware Mr. Davis was known as a "Jack Boy" and had gone to prison for robbery. This was true and supported by Mr. Davis' record conviction for robbery and related offenses, as well as victims of Mr. Davis who were ready and willing to testify concerning the robberies. Copies of

¹ This motion is filed to meet the seven (7) day deadline in N.R.S. 176.515 and to preserve Mr. Ketchum's rights. Mr. Ketchum intends to supplement this motion upon receipt of the trial transcript.

1 the conviction records evidencing Mr. Davis' previous criminal convictions are attached hereto
2 as **Exhibits A through C**.

3 Also the nature of Mr. Davis' prior robbery conviction occurred under similar
4 circumstances to what Mr. Ketchum testified and supported his theory of self-defense.
5 Specifically, Mr. Ketchum testified that Mr. Davis attempted to rob him at gunpoint. In two of
6 Mr. Davis' prior bad acts, Mr. Davis had attempted to rob victims at gunpoint in a parking lot.
7

8 Finally, during the State's rebuttal, the State called Mr. Davis' fiancée to the stand. She
9 testified that she knew Mr. Davis intimately and had his children. During direct examination, the
10 State asked the fiancée the following question: in the past three (3) years have you known
11 Ezekiel Davis to carry a gun? She responded "no." During cross examination, defense counsel
12 asked whether she knew that Mr. Davis had, in fact, previously been convicted of ex-felon
13 possession of a firearm in 2010. The State objected and the District Court admonished defense
14 counsel and referred to its prior rulings precluding the defense from asking about Mr. Davis'
15 criminal history. The District Court's asymmetrical interpretation of the rules of evidence
16 deprived Mr. Ketchum of a fair trial because once the State opened the door, it could not limit
17 Mr. Davis' fiancée's testimony.
18
19

20 **II. ARGUMENT**

21 As detailed below, Mr. Ketchum should be granted a new trial because the District
22 Court's evidentiary rulings deprived him of a fair trial. Specifically, Mr. Ketchum should have
23 been permitted to present prior bad acts and related evidence of the victim for any of four
24 reasons. First, the evidence was relevant and admissible to support Mr. Ketchum's theory that
25 the victim was the initial aggressor. Second, the evidence relating to Mr. Davis relevant and
26 admissible to show a common plan or scheme by Mr. Davis, namely, corroborating Mr. Davis'
27
28

1 violent past, including, his robbery of previous victims in a similar manner by taking them
2 outside, pointing a gun, and robbing them. Third, the evidence relating to Mr. Davis was
3 relevant and admissible to corroborate the fact that he took Mr. Ketchum outside to rob him, it
4 went to show motive on why Mr. Davis was taking him outside. Finally, in precluding defense
5 counsel from questioning Mr. Davis' fiancée about Mr. Davis' previous conviction for ex-felon
6 in possession of a firearm, the District Court's asymmetrical interpretation of the rules of
7 evidence deprived Mr. Ketchum of a fair trial because once the State opened the door, it could
8 not limit Mr. Davis' fiancée's testimony.
9

10 **The Prior Bad Acts Evidence Was Admissible**

11 1. **Self-Defense and Where Victim is Likely Aggressor**

12 In a homicide or assault and battery case, evidence of the victim's character, including
13 evidence of specific prior acts of violence by the victim, is admissible when the defendant is
14 aware of those prior bad acts. *See* N.R.S. 48.045(1)(b). N.R.S. 48.045(1)(b) provides in relevant
15 part:
16

17 1. Evidence of a person's character or a trait of his character is not
18 admissible for the purpose of proving that he acted in conformity
19 therewith on a particular occasion, except: ... (b) Evidence of the character
20 or a trait of character of the victim of the crime offered by an accused ...
21 and similar evidence offered by the prosecution to rebut such evidence[.]

22 As Mr. Ketchum testified at trial, he was aware in a general sense that Mr. Davis has committed
23 prior robberies and gone to prison as a result. *See Petty v. State*, 116 Nev. 321, 326 (2000) (citing
24 *Burgeon v. State*, 102 Nev. 43, 46, 714 P.2d 576, 578 (1986)). Thus, testimony regarding the
25 character of the victim was admissible under NRS 48.045(1)(b) regardless of whether Mr.
26 Ketchum was aware of the details and dates of Mr. Davis' prior bad acts.
27
28

1 In *Petty*, the Nevada Supreme Court also held that it was reversible error for the district
2 court to exclude evidence of the victim's criminal conviction where the defendant had general
3 knowledge of the offense:

4 the accused may present evidence of specific acts to show the accused's
5 state of mind at the time of the commission of the crime only if the
6 accused had knowledge of the specific prior acts to show the accused's
7 state of mind at the time of the commission of the crime only if the
8 accused had knowledge of the specific act. The record reveals that Petty
9 was aware that Watts had committed robberies. Although Petty's
10 testimony does not explicitly mention the 1990 robbery, we hold that the
evidence is admissible for purposes of showing the reasonableness of the
appellant's state of mind according to NRS 48.055(2) and our reasoning in
Burgeon.

11 *See Petty*, 116 Nev. at 326 (internal citations omitted).

12 The Declaration of Arrest and Judgment of Conviction for Mr. Davis' attempted robbery
13 conviction document his violent and aggressive character:

14 The victim, Tracy Smith, told Officer Wall the following: at about 2045
15 hours, he walked out of the Port of Subs located at 1306 West Craig road
16 toward his vehicle, a black Hummer H3, which was parked in front of the
17 Port of Subs. Smith noticed a black male walking east bound on the
18 sidewalk toward him. Smith opened his driver's door and heard footsteps
19 approaching quickly from behind. Smith got inside the car, shut and
20 locked the door just as the black male grabbed his exterior driver side door
21 handle. The black male grabbed the handle with his right hand and began
22 banging on the driver's side window with his left first. The black male
23 yelled "give me all your fucking money!" The black male appeared to be
24 standing on the driver's side foot rail and continued banging and yelling at
25 Smith. The black male saw Smith reach his keys toward the ignition and
26 yelled "if you start this car, I'll fucking kill you!" Smith could not see the
27 suspect's right hand and feared for his own safety.

28 Here, the evidence strongly supported Mr. Ketchum's allegation that Mr. Davis was the
initial aggressor. Consequently, the District Court's evidentiary rulings precluding Mr. Ketchum
from introducing the relevant portions of Mr. Davis' prior robbery and theft convictions,
deprived him of a fair trial.

2. Prior Bad Acts Evidence Showed Common Plan, Scheme or Motive

In addition to supporting Mr. Ketchum's theory of the case, the evidence should have been admitted to prove the victim's [Mr. Davis], the initial aggressor's motive and common plan or scheme. Specifically, Mr. Davis *modus operandi* was to violently target unsuspecting victims in parking lots and proceed to rob them. On at least two occasions, Mr. Davis has used a gun to carry out his robberies. For instance, the offense synopsis section of his PSI for his conspiracy to commit robbery and robbery conviction states as follows:

At 9:30 P.M. on August 5, victims Houston MacGyver, Shane Velez and Luke Jaykins were in the Craig's Discount Mall parking lot and were approached by suspect 1 who asked them for a cigarette. One of the victim's gave suspect 1 a cigarette and the suspect stated he would give him a dollar. The suspect 1 reached into his waistband area and produced a small silver handgun and pointed it at the victims and demanded money. Initially the victim's refused until suspect 2 walked up behind them and produced a black semi-automatic hand gun and racked the slide. Mr. MacGyver was afraid of being shot and gave suspects \$700.00 in US currency.

See Presentence Investigation Report (PSI) prepared in *State of Nevada v. Ezekiel Davis*, Case No. C258227.

This evidence tended to show that Mr. Davis had a motive to bring Mr. Ketchum outside. Since the State's theory of the case was that Mr. Ketchum robbed Mr. Davis, the prior bad acts evidence would have discounted or called into doubt the State's theory of the case. Specifically, it showed that luring and/or distracting his victims outside was Mr. Davis' "m.o." and, therefore, would have supported Mr. Ketchum's theory of self-defense at trial.

3. A New Trial Is Warranted Because the District Court’s Preclusion of Questioning of the State’s Rebuttal Witness Deprived Mr. Ketchum of a Fair Trial

During the State’s rebuttal, the State called Mr. Davis’ fiancée to the stand. She testified that she knew Mr. Davis intimately and she had Mr. Davis’ children. During direct examination, the State asked the fiancée the following question: in the past three (3) years have you known Ezekiel Davis to carry a gun? She responded “no.” During cross examination, defense counsel attempted to rebut the fiancée’s character evidence and asked whether she knew that Mr. Davis had, in fact, previously been convicted of ex-felon possession of a firearm in 2010. The State objected and the District Court admonished defense counsel and referred to its prior rulings precluding the defense from asking about Mr. Davis’ criminal history.

The District Court attempt to limit the defense’s ability to cross-examine Ms. Davis’ fiancée was in error. Specifically, once the State opened the door to evidence of Mr. Davis’ character or a trait of his character, the defense should have been entitled to offer similar evidence. For instance, in a counter-factual scenario, in *Daniel v. State*, 119 Nev. 498 (2003), the Nevada Supreme Court held that the “Statute which prohibits the admission of evidence of other crimes, wrongs, or acts to prove a person's character was not applicable because defendant placed his character in issue on direct examination, and instead, statute providing that, once a criminal defendant presents evidence of his character or a trait of his character, the prosecution may offer similar evidence in rebuttal governed whether prosecutor's cross-examination of defendant regarding his prior arrests was proper.” *Id.* If the State is permitted to present character evidence where the defendant has presented evidence of his character or a trait of his character, the reverse should be true too. “After all, in the law, what is sauce for the goose is normally sauce for the gander.” *Heffernan v. City of Paterson*, 136 S. Ct. 1412, 1418 (2016).

1 Here, once the State opened the door, Mr. Ketchum should have been entitled to present
2 evidence or elicit testimony regarding Mr. Davis' character, namely, Mr. Davis previous
3 conviction of ex-felon in possession of a firearm. *See also Jezdik v. State*, 121 Nev. 129 (2005)
4 (where defendant placed his character at issue through testimony that he had never been
5 "accused of anything prior to these current charges" the rules of evidence do not prohibit a party
6 from introducing extrinsic evidence specifically rebutting the adversary's proffered evidence of
7 good character).

10 III. CONCLUSION

11 **WHEREFORE**, for all the foregoing reasons, Mr. Ketchum's motion for a new trial
12 should be granted.

13 DATED this 2nd of June, 2017.

JAVAR ERIS KETCHUM,
by his attorney,

/s/ Nicholas M. Wooldridge

Nicholas M. Wooldridge, Esq.
Wooldridge Law Ltd.
400 South 7th Street, 4th Floor
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(702) 330-4645 Tel.
(702) 359-8494 Fax.

CERTIFICATE OF SERVICE

I confirm that on this 2nd day of June, 2017, a copy of the foregoing Motion for New Trial and Memorandum of Points and Authorities was served on the below District Attorney's Office by having the same e-filed and courtesy copied to pdmotions@clarkcountyda.com, which in turn provides electronic service to:

Marc DiGiacamo, Esq.
Chief Deputy District Attorney
200 Lewis Ave.
Las Vegas, NV 89155-2212

/s/ Nicholas M. Wooldridge

Nicholas M. Wooldridge, Esq.

EXHIBIT A

JOCP

ORIGINAL

FILED

JAN 19 2010

Alvin L. Johnson
CLERK OF COURT

DISTRICT COURT
CLARK COUNTY, NEVADA

EXHIBIT A

THE STATE OF NEVADA,

Plaintiff,

-vs-

DAVIS, EZEKIEL
Aka Davis, Ezekiel F
#2677543

Defendant.

CASE NO. C258227

DEPT. NO. IV

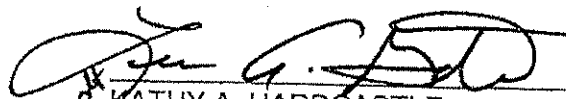
JUDGMENT OF CONVICTION
(PLEA OF GUILTY)

The Defendant previously appeared before the Court with counsel and entered a plea of guilty to the crimes of COUNT 1 – CONSPIRACY TO COMMIT ROBBERY (Category B Felony) in violation of NRS 200.380, 199.480, and COUNT 2 – ROBBERY (Category B Felony) in violation of NRS 200.380; thereafter, on the 5th day of January, 2010, the Defendant was present in court for sentencing with his counsel Leslie Pena, Deputy Public Defender, and good cause appearing,


THE DEFENDANT IS HEREBY ADJUDGED guilty of said offenses and, in addition to the \$25.00 Administrative Assessment Fee and \$150.00 DNA Analysis Fee including testing to determine genetic markers, the Defendant is sentenced to the

1 Nevada Department of Corrections (NDC) as follows: as to COUNT 1 -to a MAXIMUM
2 of SIXTY (60) MONTHS with a MINIMUM parole eligibility of THIRTEEN (13) MONTHS;
3 and as to COUNT 2 - to a MAXIMUM of ONE HUNDRED FIFTY-SIX (156) MONTHS
4 with a MINIMUM parole eligibility of THIRTY-SIX (36) MONTHS CONCURRENT with
5 C243460 and C248776; with Zero (0) DAYS credit for time served.
6

7
8 DATED this 13 day of January, 2010.
9

10
11 
12 KATHY A. HARDCASTLE
13 DISTRICT JUDGE
14
15
16
17
18
19
20

21 CERTIFIED COPY
22 DOCUMENT ATTACHED IS A
23 TRUE AND CORRECT COPY
24 OF THE ORIGINAL ON FILE
25
26
27
28


CLERK OF THE COURT

FEB 28 2017

LAS VEGAS METROPOLITAN POLICE DEPARTMENT
DECLARATION OF WARRANT/SUMMONS
(N.R.S. 171.106) **FILED**
(N.R.S. 53 amended 07/13/93)

09F17710X
274694



Aug 27 8 58 AM '93

090805-3569

STATE OF NEVADA)

Ezekiel Davis ID# 2677543

JUSTICE CLERK
BY _____
DEPUTY

COUNTY OF CLARK)

Jeffrey P. Guyer, being first duly sworn, deposes and says:

That he is a police officer with the Las Vegas Metropolitan Police Department, being so employed for a period of 8 years, assigned to investigate the crime(s) of Robbery With Deadly Weapon, Conspiracy Robbery committed on or about 08-05-09, which investigation has developed EZEKIEL DAVIS as the perpetrator thereof.

THAT DECLARANT DEVELOPED THE FOLLOWING FACTS IN THE COURSE OF THE INVESTIGATION OF SAID CRIME TO WIT:

LVMPD Personnel:

Detective	JP Guyer P#7430	Case Agent
Detective	L. Turner P#6015	Interviewed Victim
Officer	J. Larosa P#13448	Completed Crime Report
Officer	D. Garis P#5968	Located Suspect Vehicle
CSA	T. Kruse P#9975	Process Suspect Vehicle

Suspect Vehicle:

1997 Ford Thunderbird 2dr, NV 767-WBL, VIN 1FALP6240VH115370

Joshua Griffin
1124 Echo Beach Av.
North Las Vegas, NV 89086

Details:

At approximately 2130 hours on 08-05-09 Houston MacGyver, Shane Velez and Luke Jaykins were in the parking lot of Craig's Discount Mall located at 4821 W. Craig. They were approached by a Black male (Suspect #1) who asked them for a cigarette. One of the victims supplied the cigarette and the Black male stated he would give him a dollar. The Black male reached into his waistband area and produced a small silver semi-automatic handgun. He pointed it at the victims and demanded money. Initially the victims refused but an additional Black male suspect (Suspect #2) walked up behind the trio, produced a large black semi auto handgun and racked the slide. Houston MacGyver, who was afraid of being shot, handed Suspect #1 \$700 in US currency.

After obtaining the victim's money, both suspects ran through the parking lot where Suspect #2 got into a newer, silver, SUV/Sedan mixed vehicle (possibly a Dodge). Suspect #1 got into an older blue two door sedan. The victims called 911 while they pursued the suspect vehicles. The silver car turned off on a side street but the victims were able to continue pursuing the blue car. Both Houston MacGyver and

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IMAGED
LJ

LAS VEGAS METROPOLITAN POLICE DEPARTMENT
DECLARATION OF WARRANT/SUMMONS
Page 2

EVENT: 090805-3569

Shane Velez observed the blue two door vehicle had Nevada plate 767WBL. Velez even stored the suspect vehicle's licence plate into his phone to ensure the information would not be lost.

During the victim's pursuit of the suspect vehicle, the blue car ultimately turned around and turned onto the same side street as the silver car (Rancho Rea in North Las Vegas). While eastbound on Rancho Rea the victims heard two gun shots and terminated their pursuit of the suspects.

LVMPD Officer J. Larosa P# 13448 responded to the scene and documented the incident under LVMPD event # 090805-3569. MacGyver, Velez and Jaykins completed voluntary statements on scene. The victims described suspect #1 as a Black male wearing a white tank top, white doo-rag and tan shorts armed with a small silver handgun. Suspect #2 was described as a Black male wearing a white t-shirt and blue jeans armed with a large black handgun.

Investigation:

A Nevada registration check on NV 767-WBL returned to a 1997 Ford 2dr sedan with VIN 1FALP6240VH115370. The vehicle registration was consistent with the suspect vehicle description given by all three victims. The 1997 Ford bearing NV 767-WBL was currently registered to Joshua Griffin ID# 2586170. The vehicle was entered into the Wanted Vehicle System as an Armed and Dangerous vehicle used in a Robbery with Deadly Weapon.

Detective J. Guyer, L. Turner and D. Miller responded to the scene to interview the three victims. Detectives showed the victims a photo line up which consisted of Griffin's photo. None of the victims identified Griffin as a suspect involved in the robbery.

On 08-06-09 Officer Garris P#5985 conducted a vehicle stop on a 1997 blue 2dr sedan with NV license plate 767-WBL in the area of the Meadows Mall. Officer Garris noted the suspect vehicle matched the exact description of the vehicle driven by Suspect #1 while fleeing the scene of the robbery. Officer Garris' traffic stop was conducted less than 24 hours after the robbery and approximately 5 miles from the robbery location. Officer Garris identified the driver of the vehicle as Ezekiel Davis ID# 2677543. The passenger was identified as Robby Warren ID# 2698782. Davis was arrested for No Driver's License. Warren was released at the scene. The vehicle was sealed and towed to the Quality Towing Seizure pending a Search Warrant.

On 08-07-09 Detective Guyer authored a Search Warrant for the 1997 blue Ford Thunderbird 2dr with NV license plate 767-WBL. The search warrant was signed by Judge Timothy Williams and subsequently served at 1730 hours on 08-07-09. During the execution of the Search Warrant Detective Guyer located a pawn ticket in the name of Ezekiel Davis. Further investigation showed Ezekiel Davis matched the description of one of armed robbers.

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L-3

LAS VEGAS METROPOLITAN POLICE DEPARTMENT
DECLARATION OF WARRANT/SUMMONS
Page 3

EVENT: 090805-3569

On 08-12-09 Ezekiel Davis called LVMPD and advised he was the legal owner of the the 1997 blue Ford Thunderbird 2dr with NV license plate 767-WBL. Davis requested the police hold be removed so he could pick up his vehicle. Detective Guyer constructed a photo line up using Davis' most current booking photo. On 08-12-09 Detective Turner conducted a photo line up with victim Houston MacGyver. Upon looking at the photo line-up MacGyver immediately picked Davis out as the suspect who initially approached with a gun and demanded money. MacGyver was 100% certain of his identification. After the photo line-up was conducted Detectives were unable to contact Davis for an interview.

Summary:

All three robbery victims described the suspect's vehicle as blue, 1997 Ford 2dr with NV license plate 767-WBL. The robbery suspect was described as a Black male 5'10", 180. Less than 24 hours after the robbery Officer D. Garriss P# 5968 conducted a traffic stop on a blue, 1997 Ford 2dr with NV license plate 767-WBL. The traffic stop conducted less than 5 miles from the original robbery location. Officer Garriss identified the driver as Ezekiel Davis ID# 2677543. Davis matched the suspect description given by the three victims.

On 08-12-09 Detective Guyer complied a photo line up using Ezekiel Davis's recent photo. Detective Turner met with MacGyver Gale and showed the photo line. Gale immediately picked Davis out as the suspect who initially pointed a gun and him while demanding money. Davis was 100% certain of his identification.

Wherefore, declarant prays that a Warrant of Arrest be issued for suspect EZEKIEL DAVIS on a charge(s) of Robbery With Deadly Weapon, Conspiracy Robbery.

I declare under penalty of perjury under the law of the State of Nevada that the foregoing is true and correct.

Executed on this 20th day of August, 2009.

DECLARANT: 

WITNESS: 

DATE: 08/20/09

RM
MAGED
LJ

CASE NO. C258227

DEPT. NO. 11

ORIGINAL

FILED

DEC - 7 2009

Alan J. P. [Signature]
CLERK OF COURT

IN THE JUSTICE COURT OF LAS VEGAS TOWNSHIP
COUNTY OF CLARK, STATE OF NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

EZEKIEL DAVIS,

Defendant.

Case No. 09F17710X

REPORTER'S TRANSCRIPT
OF
UNCONDITIONAL WAIVER OF PRELIMINARY HEARING

BEFORE THE HONORABLE ERIC A. GOODMAN
JUSTICE OF THE PEACE

Monday, September 21, 2009, 9:00 a.m.

APPEARANCES:

For the State:

JOSHUA TOMSHECK, ESQ.
Deputy District Attorney

For the Defendant:

LESLEY PENA, ESQ.
MICHAEL FELICIANO, ESQ.
Deputies Public Defender

Reported by: RENEE SILVAGGIO, C.C.R. NO. 122

CASE NO. C258227

LEPT. NO. 11

IN THE JUSTICE COURT OF LAS VEGAS TOWNSHIP
COUNTY OF CLARK, STATE OF NEVADA

THE STATE OF NEVADA,

Plaintiff,

Case No. 09F17710X

-vs-

EZEKIEL DAVIS,

Defendant.

REPORTER'S TRANSCRIPT
 OF
UNCONDITIONAL WAIVER OF PRELIMINARY HEARING

BEFORE THE HONORABLE ERIC A. GOODMAN
 JUSTICE OF THE PEACE

Monday, September 21, 2009, 9:00 a.m.

APPEARANCES:

For the State:

JOSHUA TOMSHECK, ESQ.,
 Deputy District Attorney

For the Defendant:

LESLEY PENA, ESQ.,
 MICHAEL FELICIANO, ESQ.,
 Deputies Public Defender

Reported by: REBEK SILVAGGIO, C.C.R. NO. 122

MR. TOMSHECK: Judge, that is all correct.

One thing I wanted to add to the record, the robbery
 count that the defendant pleads to in District Court will comprise
 all three of the stated victims, which are currently in the
 Criminal Complaint.

And for the record, that's Shane Velez, Luke Jaylins and
 there is actually a typographical error as to the victim in
 Count II. It reads Gale MacGyver. The victim's actually --
 actually the first name is MaGyver, last name is Gale. The names
 have been transposed.

THE COURT: Okay.

MR. FELICIANO: That's correct.

(Solto voce at this time.)

THE COURT: Sir, do you understand that negotiation this
 morning, because it sounds like you didn't?

Do you have some questions about that?

THE DEFENDANT: Yeah, I have some questions about it.
 I'm not all the way understanding it.

THE COURT: You are not understanding the naming of the
 three victims under one count?

THE DEFENDANT: Yeah. That's pretty much saying at
 first --

THE COURT: Well, let's -- what -- you said you talked to

Las Vegas, Clark County, Nevada
 Monday, September 21, 2009, 9:00 a.m.

PROCEEDINGS

THE COURT: Ezekiel Davis, 09F17710X.

This is the time and date set for the Preliminary
 Hearing.

I understand this may be negotiated.

MR. FELICIANO: Yeah. Your Honor, today this case is
 resolved.

THE COURT: Today, Mr. Davis will unconditionally waive
 his Preliminary Hearing.

In District Court he will plead guilty to one count of:
 Conspiracy to commit robbery and one count of: Robbery, no use of
 a deadly weapon.

The State will have no opposition to those counts running
 concurrent.

And the State will have no opposition to those -- this
 case running concurrent with two other cases, which Mr. Davis was
 just revoked on, and those case numbers are C248776X and C243460X.

Also at the time of sentencing the State will make no
 recommendation as to the amount of time to be imposed in this
 case.

you Public Defender. Let's have you talk to your Public Defender,
 okay, let's have you talk to your Public Defender and see if you
 can get this straightened out. Okay?

(Solto voce at this time.)

MS. PENA: I think we have solved that, Judge.

THE COURT: Sir, do you understand the negotiation?

THE DEFENDANT: Yes.

THE COURT: Okay. Have you had a chance to talk to your
 attorney about the negotiation?

THE DEFENDANT: Yes.

THE COURT: Is it a negotiation you wish to accept?

THE DEFENDANT: Yes.

THE COURT: Is that a yes?

THE DEFENDANT: Yes.

THE COURT: Okay. Is anybody forcing you to take this
 negotiation?

THE DEFENDANT: No.

THE COURT: Is anybody threatening you or members of your
 family to take this negotiation?

THE DEFENDANT: Yes.

THE COURT: Okay. And you do want to accept it; is that
 correct?

THE DEFENDANT: Yes.

1 THE COURT: Okay. I just have some concerns because you
2 are hesitating. I just want to make sure are doing this freely
3 and voluntarily.

4 THE DEFENDANT: I'm -- there is no -- is there any way we
5 could hold this off the prelim?

6 Can we hold the Preliminary Hearing off a week?

7 THE COURT: They're ready to go. So the State has their
8 witnesses here.

9 It's the time set for the preliminary hearing. It's
10 going to be put on today.

11 THE DEFENDANT: Well --

12 THE COURT: Are you telling me you don't want to accept
13 the offer or are you telling me you do want to accept the offer?

14 Like, I have to make sure, as a judge, that you are doing
15 this freely and voluntarily.

16 I can't bind you up unless you are doing this freely.

17 THE DEFENDANT: I can't have any more time to figure this
18 out? That's what I'm saying. I can't have no more time?

19 MR. FELICIANO: I think the issue, Judge, as -- speaking
20 with Mr. Tomscheck --

21 THE DEFENDANT: I'm not trying to prolong anything. I
22 would just like a little bit more time, please.

23 MR. FELICIANO: Well, Mr. Tomscheck has his witnesses
24 here, and I believe he wants to proceed if it's not resolved.

25 And if we do proceed, it's my understanding Mr. Tomscheck

1 will resend any offers in this case.

2 THE COURT: You are an adult. You understand the
3 position you are in.

4 If they put the prelim on, the deal goes away.

5 I'm willi- -- I'm not willing to give you additional time.

6 They're here. They're ready to go.

7 So what I will do is I will put the prelim on. You are
8 going to lose the offer. That's the only thing I can do.

9 I mean, I can't extend this. I can't give you additional
10 time to think about it. Either you accept the deal today or we
11 put the prelim on today.

12 THE DEFENDANT: All right. I'll accept the deal.

13 THE COURT: All right. Sir, you have the right to a
14 Preliminary Hearing.

15 You have the right to confront and cross-examine the
16 witnesses against you; the right to take the stand and present
17 evidence on your own behalf.

18 By unconditionally waiving your Preliminary Hearing today
19 you are giving up these rights.

20 Do you understand that?

21 THE DEFENDANT: Yes.

22 THE COURT: When you get to District Court you may enter
23 your plea pursuant to the offer.

24 If you should change your mind you will go directly to

25 trial District Court. You will not come back to Justice Court for

1 a Preliminary Hearing.

2 Do you understand that?

3 THE DEFENDANT: Yes.

4 THE COURT: It appearing to me from the Complaint on file
5 herein the following crimes have been committed: Count I,
6 conspiracy to commit robbery; Count II, robbery with use of a
7 deadly weapon; Counts III and IV, attempt robbery with use of a
8 deadly weapon.

9 And the defendant having unconditionally waived his right
10 to a Preliminary Hearing, I hereby --

11 THE DEFENDANT: Hold on. They -- they added something
12 right there.

13 THE COURT: No, no, no. You get bound up on all the
14 charges. You are only pleading to a certain count. However, when
15 you get bound up to the District Court you get bound up on all the
16 counts.

17 Do you understand that?

18 MR. FELICIANO: The counts will be dismissed after you
19 are sentenced in the other case.

20 You are going to plead to the two and then the other ones
21 are going to stay there until you are sentenced and they will be
22 dismissed, so --

23 THE DEFENDANT: Plead to the two and the other ones will
24 be dropped?

25 MR. FELICIANO: Yes.

1 THE COURT: You are going to get a copy of the Guilty
2 Plea Agreement when you sign it. You actually enter your plea in
3 the District Court. You don't understand it down here.

4 Do you understand that?

5 THE DEFENDANT: Right.

6 THE COURT: So today you are not entering a plea on the
7 record. You are going to do that in District Court.

8 So today I'm going to bind you up on all the charges that
9 you have in the District Court.

10 Once you are in the District Court you are going to sign
11 a Guilty Plea Agreement and it's going to go on the record at that
12 point. Okay?

13 So today I have to bind you up on all the counts.

14 Do you understand that?

15 MR. FELICIANO: And then when we got to District Court
16 everything will be in writing as to what you are pleading to and
17 the whole negotiation. Everything I just stated will be in
18 writing at that point.

19 THE DEFENDANT: Yes.

20 THE COURT: All right. I will state that again.

21 Count I, conspiracy to commit robbery; Count II, robbery
22 with use of a deadly weapon; Counts III and IV, attempt robbery
23 with use of a deadly weapon.

24 And the defendant, having unconditionally waived his
25 right to a Preliminary Hearing, I hereby order said defendant to

1 to said answer to said charges in the Eighth Judicial District
2 Court, State of Nevada, County of Clark, on the following date and
3 time --

4 THE CLERK: September 29th, 10:30, lower level
5 arraignment, District Court Track V.

6 MR. FELICIADO: Thank you, Judge.

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10 Proceedings concluded.)

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13 ATTEST: Full, true and accurate transcript of proceedings.
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JUSTICE COURT, LAS VEGAS TOWNSHIP
CLARK COUNTY, NEVADA

STATE OF NEVADA,
Plaintiff,

vs.

DAVIS, EZEKIEL,
Defendant(s)

FILED

SEP 23 2009

[Signature]
CLERK OF COURT

) District Court Case No.: *C259227*

) Justice Court Case No.: 09F17710X

9/29/09
1030

IV

CERTIFICATE

I hereby certify the foregoing to be a full, true and correct copy of the proceedings as the same appear in the above case.

Dated this September 21, 2009

[Signature]

Justice of the Peace, Las Vegas Township

RECEIVED

SEP 23 2009

CLERK OF THE COURT

EXHIBIT B

1 AJOC

FILED

SEP 30 2009

Alma L. Blum
CLERK OF COURT

2
3 ORIGINAL

4 DISTRICT COURT

5 CLARK COUNTY, NEVADA

6 EXHIBIT B

7 Part 1

8 THE STATE OF NEVADA,

9 Plaintiff,

CASE NO. C243460

10 -vs-

DEPT. NO. XX

11 EZEKIEL F. DAVIS

12 #2677543

13 Defendant.

14
15 ORDER FOR REVOCATION OF PROBATION AND
16 AMENDED JUDGMENT OF CONVICTION
17


18
19 The Defendant previously appeared before the Court with counsel and entered a
20 plea of guilty to the crime of ATTEMPT LARCENY FROM THE PERSON (Category D
21 Felony/Gross Misdemeanor) in violation of NRS 193.330, 205.270; thereafter, on the
22 16th day of June 2008, the Defendant was present in Court for sentencing with his
23 counsel, wherein the Court adjudged the Defendant guilty under the felony statute of
24 said offense, suspended the execution of the sentence imposed and granted probation
25 to the Defendant.
26

27 THEREAFTER, a parole and probation officer provided the Court with a written
28 statement setting forth that the Defendant has, in the judgment of the parole and


1 probation officer, violated the conditions of probation; and on the 16th day of September,
2 2009, the Defendant appeared in court with his counsel, MICHAEL WILFONG, Deputy
3 Public Defender, and pursuant to a probation violation hearing/proceeding, and good
4 cause appearing to amend the Judgment of Conviction; now therefore,
5

6 IT IS HEREBY ORDERED that the probation previously granted to the Defendant
7 is revoked; and IT IS FURTHER ORDERED that the original sentence is MODIFIED to
8 a MAXIMUM of THIRTY (30) MONTHS with a MINIMUM Parole Eligibility in TWELVE
9 (12) MONTHS in the Nevada Department of Corrections (NDC); with SEVENTY-EIGHT
10 (78) DAYS credit for time served.
11

12
13 DATED this 28 day of September, 2009
14

15 
16 DAVID T. WALL
17 DISTRICT JUDGE
18
19
20

21 CERTIFIED COPY
22 DOCUMENT ATTACHED IS A
23 TRUE AND CORRECT COPY
24 OF THE ORIGINAL ON FILE
25
26
27
28


CLERK OF THE COURT

FEB 28 2017

LAS VEGAS METROPOLITAN POLICE DEPARTMENT
DECLARATION OF ARREST

ID#: NEW-

EVENT: 080315-3896

TRUE NAME:	DATE OF ARREST:	TIME OF ARREST:
DAVIS, EZEKIEL F.	03-15-08	2330

OTHER CHARGES RECOMMENDED FOR CONSIDERATION:

Possession of Narcotics Paraphernalia

THE UNDERSIGNED MAKES THE FOLLOWING DECLARATION SUBJECT TO THE PENALTY FOR PERJURY AND SAYS: That I am a peace officer with the Las Vegas Metropolitan Police Department, Clark County, Nevada, being so employed for a period of 2.6 years.

That I learned the following facts and circumstances which lead me to believe that DAVIS, EZEKIEL F. committed (or was committing) the offense of Larceny from a Person (Victim over 60) and PCS-Marijuana with intent to sell at the location of 3900 S. LV Blvd LV, NV 89109.

That the offense occurred at approximately 2300 hours on the 15 day of March, 2008.

On 03-15-08, at 2304 hrs, I Officer R. Rundell, P#8719, marked unit, 1M12, was dispatched to the Luxor Hotel and Casino, located at 3900 S. Las Vegas Blvd for a Larceny from a person call. Details stated that in the parking garage on the westside of the Luxor, an unknown BMA had taken a wallet from the PR and ran away. While enroute details were updated that Security had found the suspect and had taken him into custody.

Upon my arrival, I made contact with Security Officer David Wheeler, of the Luxor. Wheeler had the BMA suspect in-custody on the lower level of the west parking garage. The BMA was identified through a NV-ID card as Ezekiel Davis, DOB 04-28-89. I then took custody of Davis and escorted him to the front of my patrol vehicle. While escorting Davis, he stated, "Lets get this over. Just book me." I then asked Davis if I could search him. Davis stated, "Yeah, you can." While searching Davis I located in his left front pant pocket a clear sandwich baggy containing an unknown green leafy substance. This substance is known to me through my training and experience as marijuana. In Davis left front key hole pant pocket, I located 16 clear orange baggies, that were placed inside of a slightly larger clear baggy. These type of baggies are commonly used for the sells of illegal narcotics. Inside of Davis wallet, which was located in his right rear pocket, I located a clear orange baggy containing a green leafy substance that appeared to be marijuana. The baggy inside of his wallet is identical to the 16 that I had located in his other pocket. In Davis right front pocket I located \$408.00. Three \$100.00 bills, three \$20.00 bills, one \$10.00 bill, five \$5.00 bills, and thirteen \$1.00 bills. All of these bills appeared as if they had been shoved in his pocket and were crumpled up. The bills were in no numerical order. Some of the bills were almost falling out of Davis pocket. It should also be noted that there was no money in Davis wallet.

I read Davis his Miranda rights, from an LVMPD Miranda card at 2320 hrs. Post Miranda I asked Davis, "What's going on tonight?" Without stating anything about the Larceny call, Davis replied, "I had found a wallet on the ground. And the lady wasn't anywhere near it. I just picked it up and she started yelling." Later after Davis was told of his charges, he went on to state he new nothing about any old lady. He also stated he new nothing about what was going on.

LAS VEGAS METROPOLITAN POLICE DEPARTMENT
DECLARATION OF ARREST CONTINUATION
Page 2

ID#: NEW-

EVENT: 080315-3896

Shortly after questioning Davis, Security brought the PR to my location. The PR was identified as Banjank Balzer, DOB 12-12-46. Balzer is 62 yoa. Balzer stated that she was leaving work at the Luxor and waiting for her husband to pick her up. Balzer was waiting on the walk way to the westside parking garage on the second level. While rummaging through her purse for her phone, she had pulled out her wallet. Balzer was holding on to her wallet when Davis, who is unknown to her, approached her, grabbed her wallet and ran. Balzer then began screaming for help and running after Davis. Unknown citizens gave chase. While Davis was running he discarded the wallet, which was found by Balzer. Balzer stated that after finding the wallet she noticed the cash from the wallet was missing. Balzer stated that she had three \$100.00 bills, three \$20.00 bills, and some 10's, 5's and 1's. Balzer stated she believed the total amount to be around \$400.00.

I then spoke with Security Officer Wheeler. Wheeler stated he responded to the west parking garage. There he was advised by a citizen that Davis was hiding underneath a car on the lower level of the garage. Shortly thereafter Wheeler located Davis hiding underneath a Blue Kia, NV plate 983UZR, parked in Row 2-C. Wheeler advised Davis to come from under the vehicle. Wheeler then placed him in handcuffs. I arrived shortly after.

Security was able to get video of the incident. Security stated the video shows Davis taking the wallet from Balzer and then running away. It also shows him with two other BMA's, but not able to tell if they were involved. Security burned a copy of the incident and released it to me. Later when I asked Davis who the other two BMA's were, he stated he had no idea what I was talking about. Davis did seem concerned about the other two. Davis asked, "So the other two going to be booked too?". I asked Davis if he did not know the two, then why was he so concerned about what happens to them. Davis did not reply.

Due to the fact that Davis did admit to being there during the commission of the crime, Balzer being over 60, the fact that he had the same amount of money that was stolen and bill count, and that the video shows Davis taking the wallet and running, he was placed under arrest for Larceny from a Person (Victim over 60). Davis was also charged with PCS-Marijuana due to all of the narcotic related items I located on his person. The combination of all of those items together are common in the sell of narcotics. I then transported Davis to CCDC where he was booked accordingly.

At CCDC the Green leafy substance was tested ODV positive for a total of 4.1 grams of Marijuana. The cash was released to Balzer. The Marijuana and Video were impounded at SCAC.

Wherefore, Declarant prays that a finding be made by a magistrate that probable cause exists to hold said person for preliminary hearing (if charges are a felony or gross misdemeanor) or for trial (if charges are misdemeanor).

Declarant


R. RUNDELL P#8719

ARREST REPORT

08F05705X/6

☐ City☒ County☒ Adult☐ Juvenile

Sector/Beat M4

ID/EVENT# 2677543	ARRESTEE'S NAME DAVIS, EZEKIEL F. (Last, First, Middle)		S.S.# 530-45-3710	
ARRESTEE'S ADDRESS (Number, Street, City, State, Zip Code) 4912 CINNAMON SPIKE NLV, NV 89031				
CHARGES: LARCENY FROM PERSON, VICTIM OVER 60 NRS: 205.270 PCS MARIJUANA WITH INTENT TO SELL NRS: 453.337				
OCURRED:	DATE 031508	DAY OF WEEK SAT	TIME 2330	LOCATION OF ARREST (Number, Street, City, State, Zip Code) 3900 S LAS VEGAS BLVD LAS VEGAS, NV 89109
RACE B	SEX M	D.O.B. 042889	HT 601	WT 190
HAIR BRO		EYES BRO		PLACE OF BIRTH LAS VEGAS, NV

CIRCUMSTANCES OF ARREST

OFFICER INVOLVED:

R. Rundell, P#8719, call sign 1M12

VICTIM:

Balzer, Banjank

DOB: 12/12/46

Contact phone: (702) 369-5355

CONTACT:

Wheeler, David

DOB: 01/21/54

Ph: 457-5131

PROPERTY IMPOUNDED and
RECOVERED:

Pkg 1, Item 1, Owner 1
 Quantity of 1: \$408 dollars in cash
 (3)- three one hundred dollar bills
 (3)- three twenty dollar bills
 (1)- one ten dollar bill
 (5)- five, five dollar bills
 (13)- thirteen one dollar bills

The cash was recovered from Davis and
 released to Balzer

Pkg 2, Item 2, Owner 2
 Quantity 1: one clear baggy containing 16
 clear orange baggies

Pkg 2, Item 3, Owner 2
 (1) one clear orange baggy containing
 0.9 grams of ODV positive marijuana

CONFIDENTIAL

ARRESTING OFFICER(S)	P#	APPROVED BY	CONNECTING RPTS. (Type or Event Number)
RUNDELL	8719	Approved 03/16/08 2300 Hours Lt. D. Cavalieri P#3876	080315-3896, TCR, DOA, RFP, Witness List, ICR A pg and B pg, Property report, marijuana checklist, 2 Voluntary Statements

CONTINUATION REPORT

ID/Event Number: 2677543

Page 2 of

PROPERTY IMPOUNDED:

Pkg 2, Item 4, Owner 1

(1) one clear sandwich baggy containing
3.9 grams of ODV positive marijuana

Pkg 3, Item 5

(1) one DVD video of incident

All property except for cash was
impounded at SCAC

DETAILS:

On 03/15/08 at 2304 hours, I, Officer R. Rundell, P#8719, marked unit 1M12, was dispatched to the Luxor Hotel and Casino located at 3900 S. Las Vegas Blvd., for a larceny from a person call. Details stated that in the parking garage on the west side of the Luxor, an unknown BMA had taken a wallet from the P/R and ran away. While en route, details were updated that security had found the suspect and had taken him into custody.

Upon my arrival, I made contact with the Security Officer David Wheeler of the Luxor. Wheeler had the BMA suspect in custody on the lower level of the west parking garage. The BMA was identified through a Nevada ID card as Ezekial Davis, DOB 04/28/89. I then took custody of Davis and escorted him to the front of my patrol vehicle. While escorting Davis, he stated, "Let's get this over, just book me". I then asked Davis if I could search him. Davis stated, "yeah, you can". While searching Davis, I located in his left front pant pocket, a clear sandwich baggy containing unknown green leafy substance. This substance is known to me through my training and experience as marijuana.

In Davis' left front keyhole pant pocket, I located 16 clear orange baggies that were placed inside of a slightly larger clear baggy. These type of baggies are commonly used for the sales of illegal narcotics. Inside of Davis' wallet which was located in his right rear pocket, I located a clear orange baggy containing a green leafy substance that appeared to be marijuana. The baggy inside of his wallet was identical to the 16 that I located in his other pocket. In Davis' right front pocket, I located \$408.00, three hundred bills, three twenty dollar bills, one ten dollar bill, five five dollar bills and thirteen one dollar bills. All of these bills appeared as if they had been shoved in his pocket and were crumpled up. The bills were in no numerical order; some of the bills were almost falling out of Davis' pocket. It should also be noted that there was no money in Davis' wallet.

I read Davis his Miranda rights from a LVMPD Miranda card at 2320 hours. Post Miranda, I asked Davis, "What's going on tonight?". Without stating anything about the larceny call, Davis replied, "I had found a wallet on the ground and the lady wasn't anywhere near it, I just picked it up and she started yelling". Later after, Davis was told of his charges. He went onto state he knew nothing about any old lady. He also stated he knew nothing about what was going on. Shortly after questioning Davis, security brought the P/R to my location. The P/R was identified as Banjank Balzer, DOB 12/12/46. Balzer is 62 years of age.

LAS VEGAS METROPOLITAN POLICE DEPARTMENT
CONTINUATION REPORT

ID/Event Number: 2677543

Page 3 of

Balzer stated that she was leaving work at the Luxor and waiting for her husband to pick her up. Balzer was waiting on the walkway to the west side of the parking garage on the second level. While rummaging through her purse for her phone, she had pulled out her wallet. Balzer was holding her wallet in her hand when Davis, who is unknown to her, approached her, grabbed her wallet and then ran. Balzer then began screaming for help and running after Davis. Unknown citizens then gave chase. While Davis was running, he discarded the wallet which was found by Balzer. Balzer stated that after finding the wallet, she noticed the cash from the wallet was missing. Balzer stated that she had three one hundred dollar bills, three twenty dollar bills and some tens, fives and ones. Balzer stated she believed the total amount to be around \$400.00.

I then spoke with Security Officer Wheeler. Wheeler stated he responded to the west parking garage after receiving the call from his dispatch of the larceny. Upon his arrival, he was advised by a citizen that Davis was hiding underneath a car on the lower level of the garage. Shortly thereafter, Wheeler located Davis hiding underneath a blue Kia, Nevada plate 983UZR, which was parked in row 2C. Wheeler advised Davis to come from under the vehicle. Wheeler then placed him in handcuffs; I arrived shortly after.

Security was able to get video of the incident. Security stated the video shows Davis taking the wallet from Balzer and then running away. It also shows him with two other BMA's, but not able to tell if they were involved. Security burned a copy of the incident and released it to me on DVD. Later when I asked Davis who the other two BMA's were, he stated he had no idea what I was talking about. Davis then seemed to be concerned about the other two, asking, "so, are the other two going to be booked to?". I asked Davis if he did not know the other two, then why was he so concerned about what happens to them. Davis did not reply.

Due to the fact that Davis did admit to being there during the commission of the crime, Balzer being over 60 years of age, the fact he had the same amount of money that was stolen and bill count and that the video shows Davis taking the wallet and running, he was placed under arrest for Larceny From a Person, Victim over 60. Davis was also charged with PCS marijuana, due to all of the narcotic related items I located on his person. The combination of those items together are commonly used for the sales of narcotics. I then transported Davis to CCDC where he was booked.

While at CCDC, the green leafy substance was tested by me and showed positive for a total of 4.1 grams of marijuana. The cash that I recovered from Davis' right front pocket was released to Balzer at the scene. The marijuana and video were impounded at SCAC. Both Balzer and Wheeler completed voluntary statements.

RR/sj7000 Records

Job #97381

Date and time of dictation: 03/16/08 @ 0817 hrs

Date and time transcribed: 03/16/08 @ 2227 hrs

cc: R. Rundell / SCAC

1 16

1 CASE NO.: C243460

2 DEPT NO.: 6

FILED

MAY 29 1 56 PM '08

3
4 IN THE JUSTICE COURT OF LAS VEGAS TOWNSHIP
5 COUNTY OF CLARK, STATE OF NEVADA
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CLERK OF THE COURT

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ORIGINAL

8 THE STATE OF NEVADA,
9 Plaintiff,
10 vs.
11 EZEKIEL F. DAVIS,
12 Defendant.

CASE NO. 08F05705X

14 REPORTER'S TRANSCRIPT
15 OF
16 UNCONDITIONAL WAIVER OF PRELIMINARY HEARING

17 BEFORE THE HONORABLE NANCY OESTERLE
18 JUSTICE OF THE PEACE

19 Thursday, April 17, 2008
20 10:15 a.m.

21 APPEARANCES:

22 For the State: ALEXANDER CHEN, ESQ.
23 Deputy District Attorney

24 For the Defendant: MICHAEL WILFONG, ESQ.
25 Deputy Public Defender

Reported by: KRISTINE A. FLUKER, CCR NO. 403

RECEIVED
MAY 29 2008
CLERK OF THE COURT

1 LAS VEGAS, CLARK COUNTY, NV., THURS., APRIL 17, 2008
10:15 A.M.

2 -oOo-
P R O C E E D I N G S

3
4 THE COURT: Ezekiel Davis. That's
5 E-z-e-k-i-e-l, Davis, 08F05705X.

6 MR. WILFONG: Yes. And there's also going to
7 be -- there's actually three. My apologies. Lisa Hurt
8 and Franklin McDaniel.

9 THE COURT: Okay. Franklin McDaniel. Where
10 is Franklin? That's 08F06684X.

11 And the last one is Lisa Hurt, H-u-r-t.
12 That's 08F06712X. Where is Lisa?

13 Okay. Let's start first with Franklin. What
14 are we doing on Franklin's case?

15 MR. WILFONG: Yes, Your Honor. Today
16 Mr. Franklin is going to be unconditionally waiving his
17 right to a preliminary hearing. In District Court he
18 will be pleading guilty to one count of attempted grand
19 larceny. The parties have stipulated to a gross
20 misdemeanor and have stipulated to six months flat time
21 concurrent with any other cases.

22 MR. CHEN: That's correct, Your Honor.

23 THE COURT: Okay. What are we doing on
24 Ezekiel Davis?

25 MR. WILFONG: Yes, Your Honor, today

1 Mr. Davis will be unconditionally waiving his right to
2 a preliminary hearing. In District Court he's going to
3 plead guilty to one count of attempted larceny from the
4 person, a wobbler. The parties have agreed to
5 stipulate to felony treatment. The Government will not
6 oppose probation. If he is successful, he will be
7 allowed to withdraw his plea and plead guilty to the
8 gross misdemeanor with credit for time served.

9 MR. CHEN: That is correct, Your Honor. And
10 also the State retains the right to argue for terms and
11 conditions of probation.

12 MR. WILFONG: Yes, Your Honor.

13 THE COURT: Okay. And what are we doing on
14 Lisa Hurt's case?

15 MR. WILFONG: Yes, today Ms. Hurt will be
16 unconditionally waiving her right to a preliminary
17 hearing. In District Court she will be pleading guilty
18 to one count of possession of a controlled substance.
19 If she has no prior felonies, the State will not oppose
20 3363 treatment.

21 MR. CHEN: That's correct, Judge.

22 THE COURT: Okay. Franklin, did you hear the
23 negotiations?

24 DEFENDANT MCDANIEL: Yes, ma'am.

25 THE COURT: And is that what you'd like to

1 do?

2 DEFENDANT MCDANIEL: Yes, ma'am.

3 THE COURT: Ezekiel, can you pronounce your
4 name. Do you have a nickname?

5 DEFENDANT DAVIS: Ezekiel.

6 THE COURT: Is that your nickname?

7 DEFENDANT DAVIS: Zeek.

8 THE COURT: Great. We're going by that.

9 Zeek, did you hear the negotiations?

10 DEFENDANT DAVIS: Yes, ma'am.

11 THE COURT: And is that what you'd like to
12 do?

13 DEFENDANT DAVIS: Yes, ma'am.

14 THE COURT: Lisa, did you hear the
15 negotiations?

16 DEFENDANT HURT: Yes.

17 THE COURT: And is that what you'd like to
18 do?

19 DEFENDANT HURT: Yes.

20 THE COURT: Do all three of you understand
21 that by entering into these negotiations you are
22 waiving, by that I mean you're giving up, your right to
23 have a preliminary hearing scheduled for today, which
24 means you're giving up your right to cross-examine the
25 witnesses the State can call against you and challenge

1 their evidence, you're also giving up your right to
2 subpoena witnesses to testify for you, and you're
3 giving up your right to testify on your own behalf for
4 the purpose of your preliminary hearing only?

5 Franklin, is that right?

6 DEFENDANT MCDANIEL: Yes.

7 THE COURT: What about you, Zeek?

8 DEFENDANT DAVIS: Yes, ma'am.

9 THE COURT: What about you, Lisa?

10 DEFENDANT HURT: Yes.

11 THE COURT: Do each of you understand it's an
12 unconditional waiver, which means it's a permanent
13 waiver of your right to have that preliminary hearing?

14 So if you go to District Court and you change
15 your mind and decide you don't wish to go forward with
16 your plea bargain, you'd then go directly to jury trial
17 on the original charges. You would not come back to
18 Justice Court to appear before me for the purpose of
19 having your preliminary hearing on this case.

20 Do you understand that, Franklin?

21 DEFENDANT MCDANIEL: Yes, ma'am.

22 THE COURT: What about you, Zeek?

23 DEFENDANT DAVIS: Yes, ma'am.

24 THE COURT: What about you, Lisa?

25 DEFENDANT HURT: Yes.

1 THE COURT: And knowing all of that, you
2 still want the plea bargain, Franklin?

3 DEFENDANT MCDANIEL: Yes, ma'am.

4 THE COURT: What about you, Zeek?

5 DEFENDANT DAVIS: Yes, ma'am.

6 THE COURT: What about you, Lisa?

7 DEFENDANT HURT: Yes.

8 THE COURT: It appears to me from the
9 Complaint on file herein that crimes have been
10 committed. As to Franklin: one count of burglary.

11 As to Zeek: one count of larceny from the
12 person; one count of possession of a controlled
13 substance with intent to sell.

14 As to Lisa: one count of trafficking a
15 controlled substance.

16 Each defendant has unconditionally waived
17 their right to a preliminary hearing. I hereby order
18 the said defendants be held to answer to said charges
19 in the Eighth Judicial District Court, State of Nevada,
20 in and for the County of Clark.

21 Your next court date, Franklin, is --

22 THE CLERK: April 23rd, 9:00 a.m., District
23 Court 1, initial appearance, lower level.

24 THE COURT: And it's the same exact date for
25 Zeek.

1 And then, Lisa, your date is different. Your
2 date is --

3 THE CLERK: April 30th, 9:00 a.m., District
4 Court 24, initial appearance, lower level.

5 THE COURT: Wait for all your paperwork.

6 MR. WILFONG: Your Honor, one last matter as
7 to Mr. Davis. He is on house arrest right now. I
8 believe he needs the paperwork to get that lifted.

9 THE COURT: Was that part of the negotiation
10 or is that a request now?

11 MR. WILFONG: That is our request at this
12 time, Your Honor.

13 THE COURT: I don't have reports from house
14 arrest as to how he's doing or if he's been making his
15 payments or anything. And I show --

16 MR. WILFONG: Well, he's here, Your Honor.

17 THE COURT: I see that.

18 DEFENDANT DAVIS: I have receipts.

19 THE COURT: I'm sorry, what? I can't hear
20 you.

21 DEFENDANT DAVIS: I have receipts for my
22 payments for house arrest. I have my receipts.

23 THE COURT: I gave him an in-custody bindover
24 date. Without a report and since Intake recommended
25 against a release, I did not follow that. I gave him

1 'house arrest. I'm inclined to leave him on there until
2 he shows up on the next court date and enters his plea,
3 and then the State probably won't oppose it then
4 anyway.

5 Is that right, Mr. Chen?

6 MR. CHEN: That's correct, Judge.

7 THE COURT: Okay. He has in-custody date for
8 the 23rd, next Wednesday.

9 MR. WILFONG: Okay. Thank you, Your Honor.

10

11 -oOo-

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13 ATTEST: FULL, TRUE AND ACCURATE TRANSCRIPT OF
14 PROCEEDINGS.

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18 KRISTINE A. FLUKER, CCR NO. 403

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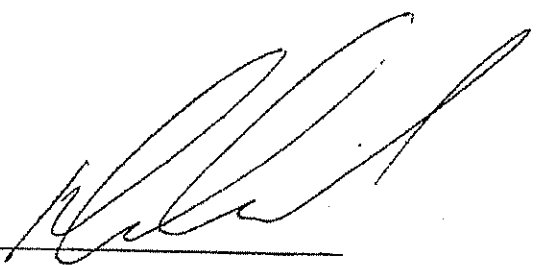
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AFFIRMATION

Pursuant to NRS 239B.030

The undersigned does hereby affirm that the
preceding bindover filed in District Court Case
No. C243460 does not contain the Social Security Number
of any person.

Dated this 20th day of May, 2008.



KRISTINE A. FLUKER, CCR. NO. 403

JOCP

FILED

MAY 07 2010

Agnes L. Johnson
CLERK OF COURT

DISTRICT COURT
CLARK COUNTY, NEVADA

EXHIBIT B
Part 2

THE STATE OF NEVADA,

Plaintiff,

-vs-

EZEKIEL F. DAVIS
#2677543

Defendant.

CASE NO. C262058

DEPT. NO. XII

JUDGMENT OF CONVICTION
(PLEA OF GUILTY)

The Defendant previously appeared before the Court with counsel and entered a plea of guilty to the crime of POSSESSION OF FIREARM BY EX-FELON (Category B Felony) in violation of NRS 202.360; thereafter, on the 27TH day of April, 2010, the Defendant was present in court for sentencing with his counsel R. ROGER HILLMAN, Deputy Public Defender, and good cause appearing,

THE DEFENDANT IS HEREBY ADJUDGED guilty of said offense and, in addition to the \$25.00 Administrative Assessment Fee and a \$150.00 DNA Analysis Fee including testing to determine genetic markers, the Defendant is sentenced as follows: TO A MAXIMUM of THIRTY-SIX (36) MONTHS with a MINIMUM parole

1 eligibility of TWELVE (12) MONTHS in the Nevada Department of Corrections (NDC),
2 to run CONCURRENT with case C243460; with ZERO (0) DAYS credit for time
3 served.
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6 DATED this 10 day of May, 2010.

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9 MICHELLE LEAVITT
10 DISTRICT JUDGE
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[Signature]
CLERK OF THE COURT

FEB 28 2017

09PCH 1278

Henderson Police Department

223 Lead St. Henderson, NV 89015

Page 1 of 2

Declaration of Arrest

DR# 09-16672

FH# 09

Arrestee's Name: Davis, Ezekiel F

Date of Arrest: 08/13/2009

Time of Arrest: 1411

Charge	Degree	NR5/HMC
Poss Stolen Property/Firearm-F	Felony	205.275.2C
Convicted Person-possess Firearm-F	Felony	202.360

THE UNDERSIGNED MAKE THE FOLLOWING DECLARATIONS SUBJECT TO THE PENALTY FOR PERJURY AND SAYS: That I, Clinton Campbell am a peace officer with the Henderson PD, Clark County, Nevada, being so employed since 06/18/2007. That I learned the following facts and circumstances which led me to believe that the above named subject committed (or was committing) the above offense/offenses at the location of 6200 South Eastern Avenue Las Vegas Nevada 89044, and that the offense occurred at approximately 1411 hours on 08/13/2009.

Details of Probable Cause

On 08/13/09 at about 1300 hours I, Officer C. Campbell (#1543), was dispatched to the Big Lots located at the corner of Eastern Avenue and Windmill, in Las Vegas, to assist Lieutenant M. Cassell (#632) and Acting Sergeant Z. Simpson (#689) in reference to a suspicious vehicle.

Lt. Cassell advised that at about 1300 hours he saw two black males in the parking lot that matched the description of a suspect of a drive-by shooting that occurred in Henderson (see DR# 09-16660 for further details). Lt. Cassell advised that both subjects were next to a white sedan that matched the vehicle description used in the drive-by shooting. He advised that they went to another vehicle (a black Saturn sedan bearing NV 817VSS) and were doing something under the hood of the Saturn. He said that both subjects then left in the Saturn going north on Eastern.

Sgt. Simpson arrived to assist Lt. Cassell as they observed the vehicle stop in the Davis Cemetery located at 6200 South Eastern Avenue, in Las Vegas. contact was made with both subjects, Ezekiel Davis (DOB 04/28/89) and Sean Rose (DOB 01/04/89) who identified themselves by means of thier NV identification.

Lt. Cassell and Sgt. Simpson advised that both Ezekiel and Sean advised that they did not know about any drive-by shooting, but Ezekiel admitted that he had a gun hidden in the Saturn and that it was his and that his finger prints would be found on the gun. Ezekiel also stated that Sean had nothing to do with the gun. Sean advised that the gun was hidden near the battery under the hood of the Saturn. Sean also stated that he was the registered owner of the Saturn and gave consent to Officers to search the vehicle.

A routine records check of Ezekiel revealed that he was a convicted felon and on probation for Attempted Theft.

Upon my arrival at the Saturn I located the handgun, a black Semi-Automatic Smith & Wesson MP.45 with serial # MPY8157, wedged between the battery and the air filter under the hood of the vehicle. Digital photos were taken of the vehicle and the location of the handgun and later downloaded into digital evidence.

A routine records check of the Handgun revealed that it was stolen, as confirmed by dispatch. I entered the gun's information in this report to have it removed from the NCIC system as stolen.

It should be noted that there was no round in the chamber of the handgun and there was a magazine inside the gun that had 5 .45 caliber rounds inside of it. The handgun, the magazine, and the rounds were later impounded as evidence at the West Substation.

Clinton Campbell

Declarant's Name

Henderson Police Department

223 Lead St. Henderson, NV 89015

Page 2 of 2

Declaration of Arrest Continuation Page

DR# 09-16672

FH# 09

Arrestee's Name: Davis, Ezekiel F

Details of Probable Cause (Continued)

Due to the fact that Ezekiel admitted the stolen handgun was his, he was placed under arrest for Possession of Stolen Firearm (NRS 205.275-2C), and Convicted Person-Possess Firearm (NRS 202.360).

Wherefore, Declarant prays that a finding be made by a magistrate that probable cause exists to hold said person for preliminary hearing (if charges are a felony or gross misdemeanor) or for trial (if charges are a misdemeanor).

Clinton Campbell

Declarant's Name

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TRAN

CASE NO. C262058

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IN THE JUSTICE'S COURT OF HENDERSON TOWNSHIP
COUNTY OF CLARK, STATE OF NEVADA

STATE OF NEVADA,

Plaintiff,
vs.

EZEKIEL F. DAVIS,

Defendant.

CASE NO. 09FH1597X

REPORTER'S TRANSCRIPT

OF

UNCONDITIONAL WAIVER OF PRELIMINARY HEARING

BEFORE THE HONORABLE STEPHEN L. GEORGE
JUSTICE OF THE PEACE

WEDNESDAY, FEBRUARY 10, 2010

APPEARANCES:

For the State: AGNES BOTELHO, ESQ.
Deputy District Attorney

For the Defendant: BITA KHAMSI, ESQ.
Deputy Public Defender

Reported by: Lisa Brenske, CCR #186

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CLERK OF THE COURT

1 HENDERSON, NEVADA, FEBRUARY 10, 2010, 9:30 a.m.

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5 THE COURT: Ezekiel Davis, case number
6 09FH1597X.

7 MS. KHAMSI: This matter is negotiated,
8 Your Honor. Mr. Davis is going to be unconditionally
9 waiving his right to a preliminary hearing. He is
10 going to be pleading guilty to the charge of possession
11 of firearm by ex-felon. State is recommending 12 to 36
12 months and will not oppose concurrent time with the
13 time he is serving concurrently.

14 MS. BOTELHO: We also ask he forfeit the
15 weapon.

16 THE COURT: I'm sorry?

17 MS. KHAMSI: He is going to be forfeiting
18 the weapon as part of the negotiations.

19 THE COURT: Oh, okay.

20 Is that your understanding of the
21 negotiations here this morning, sir?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: Do you understand that by
24 accepting those negotiations you will be
25 unconditionally waiving or giving up that right to a

1 preliminary hearing?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: That means you'll be giving up
4 the right to confront and cross-examine any witnesses,
5 the right to present any evidence in your own behalf,
6 the right to testify or not testify, it would be your
7 choice. Do you understand those rights?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: Do you understand should you
10 change your mind about these negotiations this matter
11 would simply be set for a trial, it would not be sent
12 back here for a preliminary hearing due to the fact
13 you're unconditionally waiving or giving up your right
14 to a preliminary hearing this morning.

15 Knowing all that do you still wish to
16 unconditionally waive your right to a preliminary
17 hearing this morning?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: Therefore it appearing to me
20 from the complaint on file herein that a crime has been
21 committed, to wit: Ex-felon in possession of a
22 firearm, and the defendant named herein, Ezekiel Davis,
23 having unconditionally waived his right to a
24 preliminary hearing. I hereby order said defendant be
25 held to appear to said charges in the Eighth Judicial

1 District Court, State of Nevada, County of Clark.

2 Mr. Davis, you're scheduled to appear in
3 District Court for your initial arraignment on --

4 THE CLERK: February 25th, 10:30 a.m.,
5 lower level, this case is tracked to Department 12.

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7 (The proceedings concluded.)

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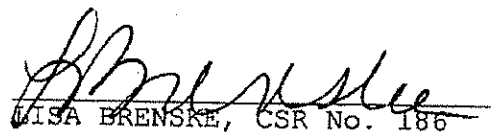
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11 ATTEST: Full, true and accurate
12 transcript of proceedings.

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LISA BRENSKE, CSR No. 186

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EXHIBIT C

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CLERK OF COURT

DISTRICT COURT
CLARK COUNTY, NEVADA

EXHIBIT C

THE STATE OF NEVADA,

Plaintiff,

-vs-

EZEKIEL DAVIS
aka Ezekiel F. Davis
#2677543

Defendant.

CASE NO. C248776

DEPT. NO. V

ORDER FOR REVOCATION OF PROBATION AND
AMENDED JUDGMENT OF CONVICTION


The Defendant previously appeared before the Court with counsel and entered a plea of guilty to the crime of ATTEMPT TO COMMIT THEFT (Category D Felony/Gross Misdemeanor) in violation of NRS 193.330, 205.0832, 205.0835; thereafter, on the 20th day of November 2008, the Defendant was present in Court for sentencing with his counsel, thereupon using the presentence report from C243460; wherein the Court adjudged the Defendant guilty under the felony statute of said offense, suspended the execution of the sentence imposed and granted probation to the Defendant.


1 THEREAFTER, a parole and probation officer provided the Court with a written
2 statement setting forth that the Defendant has, in the judgment of the parole and
3 probation officer, violated the conditions of probation; and on the 17th day of September,
4 2009, the Defendant appeared in court with his counsel, JOSIE T. BAYUDAN, Deputy
5 Public Defender, and pursuant to a probation violation hearing/proceeding, and good
6 cause appearing to amend the Judgment of Conviction; now therefore,
7

8 IT IS HEREBY ORDERED that the probation previously granted to the Defendant
9 is revoked; and IT IS FURTHER ORDERED that the original sentence is MODIFIED to
10 a MAXIMUM of THIRTY (30) MONTHS with a MINIMUM Parole Eligibility in
11 TWELVE (12) MONTHS in the Nevada Department of Corrections (NDC), to run
12 CONCURRENT with case C243460; with NINETY-THREE (93) DAYS credit for time
13 served.
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17 DATED this 21 day of September, 2009

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21 JACKIE GLASS
22 DISTRICT JUDGE
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CLERK OF THE COURT

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1 JOC

2 DAVID ROGER
3 Clark County District Attorney
4 Nevada Bar #002781
5 200 Lewis Avenue
6 Las Vegas, Nevada 89155-2212
7 (702) 671-2500
8 Attorney for Plaintiff

FILED

JAN 5 4 18 PM '09

E. J. Smith
CLERK OF THE COURT

DISTRICT COURT
CLARK COUNTY, NEVADA

8 THE STATE OF NEVADA,

9 Plaintiff,

10 -vs-

11 EZEKIEL DAVIS, aka
12 Ezekiel F. Davis,
13 #2677543

14 Defendant.

Case No: C248776

Dept No: III

15 JUDGMENT OF CONVICTION
16 (PLEA OF GUILTY)

17 The Defendant previously appeared before the Court with counsel and entered a plea
18 of guilty to the crime(s) of ATTEMPT TO COMMIT THEFT (Category D Felony/Gross
19 Misdemeanor), in violation of NRS 193.330, 205.0832, 205.0835; thereafter, on the 20th day
20 of November, 2008, the Defendant was present in court for sentencing with his counsel,
21 MISTI ASHTON, Deputy Public Defender, and good cause appearing,

22 THE DEFENDANT IS HEREBY ADJUDGED guilty of said offense(s) ATTEMPT
23 TO COMMIT THEFT (Category D Felony) and, COURT ORDERED: in addition to the
24 \$25.00 Administrative Assessment Fee and a \$150.00 DNA Analysis fee including testing to
25 determine genetic markers, Defendant SENTENCED to a MAXIMUM of THIRTY-SIX
26 (36) MONTHS and a MINIMUM of TWELVE (12) MONTHS in the Nevada Department of
27 Corrections (NDC); sentence SUSPENDED; placed on PROBATION for an indeterminate
28 period not to exceed THREE (3) YEARS with the following CONDITIONS:

1. Abide by any curfew imposed by the Division of Parole and Probation

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CLERK OF THE COURT

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- 1 2. Enter and complete the Drug Court program
- 2 3. Enter and complete any counseling programs deemed necessary.
- 3 4. Maintain full-time employment or full-time student status
- 4 5. Complete ten (10) hours of community service work per month
- 5 6. Submit to random urinalysis

6 DATED this 21st day of December, 2008.

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8 AWH
DISTRICT JUDGE CS

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John S. Johnson
CLERK OF THE COURT

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AFFIDAVIT

08-6853

1 State of NEVADA }

2 County of Clark }

ss:

3 A. Antoniewicz, being first duly sworn, deposes and says:

4 That he is a Police Detective with the North Las Vegas Police Department, City of North
5 Las Vegas, County of Clark, State of Nevada, being so employed for a period of 6 years,
6 assigned to investigate the crime(s) of **Attempt Robbery**, committed on or about April 15, 2008,
7 which investigation has developed **Ezekiel Davis** as the perpetrator(s) thereof.

8 That Affiant developed the following facts in the course of the investigation of said crime,
9 to wit: On March 15, 2008, at about 2100 hours, Officer Wall (p#1951), responded to 3512 Chaps
10 Ranch in reference to a report of an attempt robbery. The victim, Tracy Smith, told Officer Wall the
11 following: at about 2045 hours, he walked out of the Port of Subs located at 1306 West Craig road
12 toward his vehicle, a black Hummer H3, which was parked in front of the Port of Subs. Smith noticed
13 a black male walking east bound on the sidewalk toward him. Smith opened his driver's door and
14 heard footsteps approaching quickly from behind. Smith got inside the car, shut and locked the door
15 just as the black male grabbed his exterior driver side door handle. The black male grabbed the
16 handle with his right hand and began banging on the driver's side window with his left fist. The black
17 male yelled "give me all your fucking money!" The black male appeared to be standing on the driver's
18 side foot rail and continued banging and yelling at Smith. The black male saw Smith reach his keys
19 toward the ignition and yelled "if you start this car, I'll fucking kill you!" Smith could not see the
20 suspect's right hand and feared for his own safety. Smith started the car's engine, quickly backed out
21 of the parking space and sped west bound through the shopping center. Smith saw the suspect run
22 toward a dark-colored small sports car and then lost sight of him. Smith described the black male as
23 being about 17 or 18 years of age with braided hair hanging down to his chin. The black male wore
24 a black, white, and purple baseball cap and jacket with dark colored pants. Smith told Officer Wall
25 that he would be able to identify the black male if he saw him again.

26 Affiant went to the Port of Subs and checked the area for video surveillance. There was no video
27 surveillance available at the Port of Subs. However, Affiant went to the Lucky's grocery store, 1324
28

1 West Craig road, which is at the west end of the Port of Subs shopping center. Affiant spoke with
2 Lucky's Organized Retail Crime Specialist Thomas Andersson. He showed Affiant video surveillance
3 that covered the time of the crime. On the video, Affiant noticed the following: a black male entered
4 the store on March 15, 2008, at about 2035 hours. The male was wearing a black, white and purple,
5 baseball cap and jacket and he appeared to have braided hair. The black male was preceded in
6 entering the store (about five seconds) by another black male who was wearing blue jeans and a
7 white shirt. Both black males walked toward the restroom area where the black male with the white
8 shirt entered the bathroom and the black male with the baseball cap waited nearby. When the black
9 male exited the bathroom, both black males exited the store together (about 2045 hours). Upon
10 exiting the store, the black male with the baseball cap walked east bound (out of the camera's view)
11 toward the area of the Port of Subs and the black male with the white shirt walked south toward the
12 parking lot and eventually got into a black four door vehicle. Minutes later, at about 2047 hours, the
13 black male with the baseball cap ran back into the camera's view and got into the same black vehicle.
14 The vehicle then went east bound through the parking lot and exited the camera's view.
15 On the video surveillance, Affiant noticed that the black, white and purple colored jacket worn by the
16 suspect had a picture of "Marvin the Martian" (cartoon character) on the back. Andersson made
17 Affiant a copy of the surveillance video which included still photos and Affiant later booked it into
18 evidence at the North Las Vegas Police Department.
19 Due to the unique design on the black male's jacket, Affiant printed still photos from the video
20 surveillance and visited the local high schools in the northern part of North Las Vegas. No one was
21 able to positively identify any of the black males on the pictures. However, on April 4, 2008, Detective
22 Freeman (p#1570) was contacted by Cheyenne High School (3200 West Alexander) personnel, as
23 Affiant was unavailable, and advised that a student matching the description of the suspect was at
24 school and wearing a "Marvin the Martian" jacket. Detective Freeman went to the school and made
25 contact with the student, Darvell Washington. Detective Freeman did not speak to Washington about
26 the incident as he only photographed him for identification purposes. The pictures showed that
27 Washington had braided hair and the jacket matched the jacket on the video surveillance.
28 On April 17, 2008, Affiant met with Smith (victim) and showed him a photo lineup that Affiant

1 obtained from Clark County Juvenile Hall. The photo lineup contained Washington in the lower left
2 hand corner. Smith looked at the lineup and eventually picked the person pictured in the middle of
3 the right hand side.

4 On May 22, 2008, Affiant went to Cheyenne High School to speak with Washington. Before
5 requesting Washington's presence, Affiant showed the still photos to Clark County School District
6 Police Officer Grimes. Affiant asked him if he believed the person in the photo was Washington.
7 Officer Grimes said it was not Washington, but he recognized the black male in the white shirt. Officer
8 Grimes did not remember the black male's name, but later advised Affiant it was Joseph Preston,
9 who previously attended the school. Officer Grimes provided Affiant with Preston's personal
10 information that showed his birth date was 04/17/1988 and his residence address was 5438 Forsythia
11 Court in North Las Vegas. A records check through the Nevada Department of Motor Vehicles
12 database revealed a driver license in the name of Joseph Preston (#1402292801). The license
13 showed Preston with the same birth date and address as that provided by Officer Grimes. The picture
14 on the driver license closely resembled that of the black male wearing the white shirt on the video
15 surveillance.

16 On May 29, 2008, Affiant went to 5438 Forsythia Court. As Affiant approached the residence, Affiant
17 noticed a black four door Mercury Marquis (NV/672use) parked on the driveway. A records check on
18 the plate showed it was registered to Joseph Preston with a birth date of 04/17/1988. Affiant
19 eventually made contact with and spoke to Preston in the presence of Detective Owens (p#1173).
20 Detective Owens recorded this conversation with a digital audio recorder. Affiant later had the
21 conversation copied to a compact disc and Affiant booked the disc into evidence at the North Las
22 Vegas Police Department. Preston told Affiant the following: he was at the Lucky's store with his
23 friend Ezekiel Davis, who was drunk. When they exited the store, Davis told him to go to his
24 (Preston's) vehicle. Davis then approached the Hummer (Smith's vehicle) and jumped on it. However,
25 the vehicle drove away. Davis then got back into Preston's vehicle and started to say "off the wall"
26 stuff. Preston and Davis then left the area. Preston said Davis did not have a gun and did not get any
27 money from the incident. Preston said Davis got arrested later that same day because he robbed
28 someone at the Luxor casino. Preston said Davis was about 18 years of age and his birthday was

1 April 28. Preston said he knew Davis from school, but did not know where he lived.
2 Affiant went to Cheyenne High School and received the latest information they had on an Ezekiel
3 Davis. The information provided showed an Ezekiel F. Davis with a birth date of 04/28/1989.
4 A records check on Davis using the date of birth showed he had an identification card through
5 Nevada Department of Motor Vehicles (#1402503578). Further records showed Davis was arrested
6 on March 15, 2008, for larceny from person (victim over 65) and possession of controlled substance
7 with intent to sell through Las Vegas Metropolitan Police Department's jurisdiction.
8 A photo lineup was created using Davis' identification card picture and five other pictures of persons
9 with similar facial and hair features. Davis was in the number two position. Affiant showed this photo
10 lineup to Smith (victim) and he immediately pointed to Davis and said this was definitely the person
11 that attempted to rob him. Affiant had Smith complete and sign the photo lineup and Affiant later
12 booked it into evidence at the North Las Vegas Police Department. On July 23, 2008, at about 0930
13 hours, Detective Lettieri (p#1522) and Affiant went to Davis' last known address, 4912 Cinnamon
14 Spice Court in North Las Vegas. Affiant attempted to make contact with Davis with negative results.

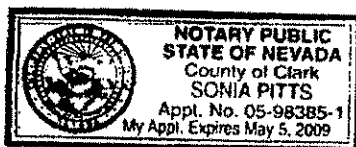
15 WHEREFORE, Affiant prays that a Warrant of Arrest be issued for **Ezekiel Davis** on the
16 charge of **Attempt Robbery**.

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A. Antoniewicz, Affiant

22 SIGNED and SWORN to before me by
23 A. Antoniewicz this 24 day of July, 2008.

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26 Notary Public In and For Said County and State



DEPARTMENT 2
CASE NO. C248776

FILED ORIGINAL

IN THE JUSTICE'S COURT OF NORTH LAS VEGAS TOWNSHIP
COUNTY OF CLARK, STATE OF NEVADA

Nov 18 3 40 PM '08

-000-

E. J. [Signature]
CLERK OF THE COURT

THE STATE OF NEVADA,
Plaintiff,
vs.
EZEKIEL DAVIS,
Defendant.

Case No. 08FN1680X

REPORTER'S TRANSCRIPT OF
UNCONDITIONAL WAIVER OF PRELIMINARY HEARING

BEFORE RICHARD GLASSON,
JUSTICE OF THE PEACE PRO TEM

WEDNESDAY, OCTOBER 15, 2008
9:30 A.M.

APPEARANCES:

For the State: Amy Ferreira, Esq.
Deputy District Attorney

For the Defendant: Travis Raymond, Esq.
Deputy Public Defender

Reported by: Norma Jean Silverman, RPR, RMR
NV. C.C.R. No. 572

NORMA JEAN SILVERMAN CCR 572 (702) 451-5607
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CLERK OF THE COURT

NORTH LAS VEGAS, CLARK COUNTY, NEVADA
WEDNESDAY, OCTOBER 15, 2008, 9:30 A.M.

* * * * *
P R O C E E D I N G S

THE COURT: State of Nevada versus
Ezekiel Davis, Case No. 08FN1680X.

Mr. Davis is present in custody.

MR. RAYMOND: He is, judge.

Travis Raymond on his behalf.

This matter has been resolved.

Today Mr. Davis will unconditionally
waive his right to a preliminary hearing.

In district court he will be pleading
guilty to one count of attempt theft. That is a
wobbler.

The State will retain the right to argue
at rendition of sentence.

THE COURT: Okay. Ms. Ferreira, that's
your understanding of the negotiations as well?

MS. FERREIRA: Yes, your Honor, that's
correct.

THE COURT: Thank you.

Mr. Davis, did you understand the
negotiations that have been stated on the record

1 MR. RAYMOND: No.

2 THE COURT: Sounds like it's either a
3 felony or a gross.

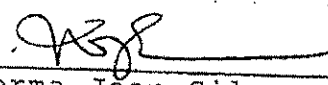
4 MR. RAYMOND: It's the judge's decision
5 like we talked about.

6 THE DEFENDANT: Okay.

7 THE COURT: Thank you, sir. Go ahead
8 and have a seat.

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10 * * * * *

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12 ATTEST: Full, true, and accurate transcript of
13 proceedings.

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21 Norma Jean Silverman, RPR, RMR
22 NV. C.C.R. No. 572
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NICHOLAS M. WOOLDRIDGE
Nevada State Bar No. 8732
WOOLDRIDGE LAW, LTD.
400 South 7th Street, 4th Floor
Las Vegas, NV 89101
Telephone: (702) 330-4645
nicholas@wooldridgelawlv.com
Attorney for Javar Eris Ketchum

EIGHTH JUDICIAL DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

vs.

JAVAR ERIS KETCHUM,

Defendant.

Case No.: C-16-319714-1

Dept. XVII

**BRIEF IN SUPPORT OF DEFENDANT’S REQUEST TO ADMIT VICTIM’S
PRIOR BAD ACTS AND/OR CONVICTIONS**

COMES NOW the Petitioner, JAVAR ERIS KETCHUM (hereinafter, “Mr. Ketchum”),
by and through his undersigned counsel, Nicholas M. Wooldridge, of the law firm of Wooldridge
Law Ltd., and files this response to this Court’s Order dated May 18, 2017 and responds as
follows to the Court’s Order.

MEMORANDUM OF POINTS AND AUTHORITIES

I. BACKGROUND

The charges alleged in the Indictment arise from the September 25, 2016 shooting of Ezekiel F. Davis outside the Top Knotch Apparel on the 4200 block of South Decatur Boulevard. The State of Nevada has charged Mr. Ketchum in a five (5) count Indictment together with co-defendants Antoine Bernard, Roderick Vincent, and Marlo Chiles as follows: (1) one count of murder with a deadly weapon; (2) one count of robbery with use of a deadly weapon; and (3) three counts of accessory to murder. Mr. Ketchum is only charged in the first two counts of the Indictment. Jury trial is set to begin on May 22, 2017.

II. RESPONSE

On May 18, 2017, this Court Ordered the parties to submit briefing as to whether the Defendant may present evidence regarding the alleged victim's (Ezekiel Davis') character, prior bad acts and/or previous convictions at trial. A copy of the Declaration of Arrest for Mr. Davis' attempted robbery conviction is attached hereto as **Exhibit A**. Additionally, a copy of Mr. Davis' other Judgment of Conviction records are collectively attached hereto as **Exhibit B**. A copy of the Declaration of Arrest and Judgment of Conviction are attached hereto as **Exhibit C** (*State of Nevada v. Ezekiel Davis*, Case No. C258227).

The State makes two main arguments. First, the State argues that Mr. Ketchum has not offered any proof as to his awareness of Mr. Davis' prior bad acts. However, testimony regarding the character of the victim is admissible under NRS 48.045(1)(b) regardless of Mr. Ketchum's awareness of Mr. Davis' prior bad acts. This provision expressly permits the accused to present evidence of the character of a crime victim regardless of the accused's knowledge of the victim's character. *See Petty v. State*, 116 Nev. 321, 326 (2000) (citing *Burgeon v. State*, 102

1 Nev. 43, 46, 714 P.2d 576, 578 (1986)). Moreover, no *Petrocelli* style hearing is required under
2 this provision.

3 Second, under N.R.S. 48.045(2), Mr. Ketchum is not required to offer any proof *at this*
4 *stage*. While the State asserts that Mr. Ketchum has not offered proof, it fails to cite a single
5 case or provide any details as to what proof should be provided at this stage. In the normal
6 course, the Court should make this determination after hearing Mr. Ketchum's testimony. The
7 State has not cited to any authority where Mr. Ketchum needs to predict under which of the
8 various provisions and/or exceptions the prior bad acts evidence may come in. This is because
9 each of the cases cited by the State discuss the situation where the State is seeking to admit prior
10 bad acts of the defendant.¹

11
12 The State's Response fails to cite a single case where a *Petrocelli* style hearing was held
13 on a *Defendant's request* to admit prior bad acts evidence of a victim. Simply put, in the context
14 of criminal prosecutions, what is sauce for the goose is not sauce for the gander. This is because
15 Constitutional protections that apply to the defendant, don't apply to the prosecution. For
16 example, defendants do not have to hold a *Petrocelli* hearing when a witness is going to testify
17 and the Defense or even the State is planning to impeach that witness concerning prior bad acts.
18 Further, even if Mr. Ketchum was required to show, "by plain, clear and convincing evidence"
19 that the victim committed the prior bad acts, this requirement is easily met where the prior bad
20 acts are tied to Mr. Davis' criminal convictions, the records of which are attached to this
21 response.
22
23
24

25 Next, the cases cited in the State's Response discuss the reverse scenario: where the State
26 seeks to admit prior bad acts of a defendant. *See e.g., Rosky v. State*, 121 Nev. 184, 196, 111
27

28 ¹ The burden of proof at trial is on the State; there is no burden of proof on Mr. Ketchum and, in fact, there is no
proffer requirement on Mr. Ketchum under the reciprocal disclosure requirements of N.R.S. 174.234.

1 P.3d 690, 698 (2005) (defendant's prior bad acts eight years apart are not admissible). However,
2 *Rosky* is inapposite to the question posed here: whether the victim's prior bad acts are
3 admissible. NRS 48.045(2), which is comparable to Federal Rules of Evidence 404(b), applies
4 to the accused and other witnesses alike. More importantly, although the rule applies to
5 witnesses other than the defendant, it may not be applied as stringently as it otherwise would.
6 This is because, as the Ninth Circuit has observed, "courts should indulge the accused when the
7 defendant seeks to offer prior crimes evidence of a third person for an issue pertinent to the
8 defense other than propensity." *See United States v. McCourt*, 925 F.2d 1229, 1236 (9th Cir.
9 1991). Here, Mr. Davis' prior bad acts are relevant to Mr. Ketchum's theory of self-defense at
10 trial, failure to admit the evidence would prejudice and handicap Mr. Ketchum's ability to
11 present his defense, and should, therefore, be admitted.
12
13

14 **III. CONCLUSION**

15 **WHEREFORE**, for all the foregoing reasons, Mr. Ketchum's should be permitted to
16 present evidence regarding the alleged victim's (Ezekiel Davis') character, prior bad acts and/or
17 previous convictions at trial.
18

19 DATED this 19th day of May, 2017.

JAVAR ERIS KETCHUM,
by his attorney,

21 /s/ Nicholas M. Wooldridge

22

Nicholas M. Wooldridge, Esq.
23 Wooldridge Law Ltd.
24 400 South 7th Street, 4th Floor
25 Las Vegas, NV 89101
26 nicholas@wooldridgelawlv.com
27 (702) 330-4645 Tel.
28 (702) 359-8494 Fax.

1
2 **CERTIFICATE OF SERVICE**

3
4 I confirm that on this 19th day of May, 2017, a copy of the foregoing Brief and
5 Memorandum of Points and Authorities was served on the below District Attorney's Office by
6 having the same e-filed and courtesy copied to pdmotions@clarkcountyda.com, which in turn
7 provides electronic service to:

8 Marc DiGiacamo, Esq.
9 Chief Deputy District Attorney
10 200 Lewis Ave.
11 Las Vegas, NV 89155-2212

12
13 /s/ Nicholas M. Wooldridge

14

Nicholas M. Wooldridge, Esq.
15
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EXHIBIT A

JOCP

ORIGINAL

FILED

JAN 19 2010

Alvin L. Johnson
CLERK OF COURT

DISTRICT COURT
CLARK COUNTY, NEVADA

EXHIBIT A

THE STATE OF NEVADA,

Plaintiff,

-vs-

CASE NO. C258227

DEPT. NO. IV

DAVIS, EZEKIEL
Aka Davis, Ezekiel F
#2677543

Defendant.

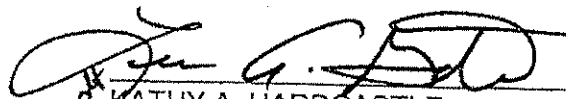
JUDGMENT OF CONVICTION
(PLEA OF GUILTY)

The Defendant previously appeared before the Court with counsel and entered a plea of guilty to the crimes of COUNT 1 – CONSPIRACY TO COMMIT ROBBERY (Category B Felony) in violation of NRS 200.380, 199.480, and COUNT 2 – ROBBERY (Category B Felony) in violation of NRS 200.380; thereafter, on the 5th day of January, 2010, the Defendant was present in court for sentencing with his counsel Leslie Pena, Deputy Public Defender, and good cause appearing,


THE DEFENDANT IS HEREBY ADJUDGED guilty of said offenses and, in addition to the \$25.00 Administrative Assessment Fee and \$150.00 DNA Analysis Fee including testing to determine genetic markers, the Defendant is sentenced to the

1 Nevada Department of Corrections (NDC) as follows: as to COUNT 1 -to a MAXIMUM
2 of SIXTY (60) MONTHS with a MINIMUM parole eligibility of THIRTEEN (13) MONTHS;
3 and as to COUNT 2 - to a MAXIMUM of ONE HUNDRED FIFTY-SIX (156) MONTHS
4 with a MINIMUM parole eligibility of THIRTY-SIX (36) MONTHS CONCURRENT with
5 C243460 and C248776; with Zero (0) DAYS credit for time served.
6

7
8 DATED this 13 day of January, 2010.
9

10
11 
12 KATHY A. HARDCASTLE
13 DISTRICT JUDGE
14
15
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20

21 CERTIFIED COPY
22 DOCUMENT ATTACHED IS A
23 TRUE AND CORRECT COPY
24 OF THE ORIGINAL ON FILE
25
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28


CLERK OF THE COURT

FEB 28 2017

LAS VEGAS METROPOLITAN POLICE DEPARTMENT
DECLARATION OF WARRANT/SUMMONS
(N.R.S. 171.106) **FILED**
(N.R.S. 53 amended 07/13/93)

09F17710X
274694



Aug 27 8 58 AM '93

090805-3569

STATE OF NEVADA)

Ezekiel Davis ID# 2677543

JUSTICE CLERK
BY _____
DEPUTY

COUNTY OF CLARK)

Jeffrey P. Guyer, being first duly sworn, deposes and says:

That he is a police officer with the Las Vegas Metropolitan Police Department, being so employed for a period of 8 years, assigned to investigate the crime(s) of Robbery With Deadly Weapon, Conspiracy Robbery committed on or about 08-05-09, which investigation has developed EZEKIEL DAVIS as the perpetrator thereof.

THAT DECLARANT DEVELOPED THE FOLLOWING FACTS IN THE COURSE OF THE INVESTIGATION OF SAID CRIME TO WIT:

LVMPD Personnel:

Detective	JP Guyer P#7430	Case Agent
Detective	L. Turner P#6015	Interviewed Victim
Officer	J. Larosa P#13448	Completed Crime Report
Officer	D. Garis P#5968	Located Suspect Vehicle
CSA	T. Kruse P#9975	Process Suspect Vehicle

Suspect Vehicle:

1997 Ford Thunderbird 2dr, NV 767-WBL, VIN 1FALP6240VH115370

Joshua Griffin
1124 Echo Beach Av.
North Las Vegas, NV 89086

Details:

At approximately 2130 hours on 08-05-09 Houston MacGyver, Shane Velez and Luke Jaykins were in the parking lot of Craig's Discount Mall located at 4821 W. Craig. They were approached by a Black male (Suspect #1) who asked them for a cigarette. One of the victims supplied the cigarette and the Black male stated he would give him a dollar. The Black male reached into his waistband area and produced a small silver semi-automatic handgun. He pointed it at the victims and demanded money. Initially the victims refused but an additional Black male suspect (Suspect #2) walked up behind the trio, produced a large black semi auto handgun and racked the slide. Houston MacGyver, who was afraid of being shot, handed Suspect #1 \$700 in US currency.

After obtaining the victim's money, both suspects ran through the parking lot where Suspect #2 got into a newer, silver, SUV/Sedan mixed vehicle (possibly a Dodge). Suspect #1 got into an older blue two door sedan. The victims called 911 while they pursued the suspect vehicles. The silver car turned off on a side street but the victims were able to continue pursuing the blue car. Both Houston MacGyver and

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LAS VEGAS METROPOLITAN POLICE DEPARTMENT
DECLARATION OF WARRANT/SUMMONS
Page 2

EVENT: 090805-3569

Shane Velez observed the blue two door vehicle had Nevada plate 767WBL. Velez even stored the suspect vehicle's licence plate into his phone to ensure the information would not be lost.

During the victim's pursuit of the suspect vehicle, the blue car ultimately turned around and turned onto the same side street as the silver car (Rancho Rea in North Las Vegas). While eastbound on Rancho Rea the victims heard two gun shots and terminated their pursuit of the suspects.

LVMPD Officer J. Larosa P# 13448 responded to the scene and documented the incident under LVMPD event # 090805-3569. MacGyver, Velez and Jaykins completed voluntary statements on scene. The victims described suspect #1 as a Black male wearing a white tank top, white doo-rag and tan shorts armed with a small silver handgun. Suspect #2 was described as a Black male wearing a white t-shirt and blue jeans armed with a large black handgun.

Investigation:

A Nevada registration check on NV 767-WBL returned to a 1997 Ford 2dr sedan with VIN 1FALP6240VH115370. The vehicle registration was consistent with the suspect vehicle description given by all three victims. The 1997 Ford bearing NV 767-WBL was currently registered to Joshua Griffin ID# 2586170. The vehicle was entered into the Wanted Vehicle System as an Armed and Dangerous vehicle used in a Robbery with Deadly Weapon.

Detective J. Guyer, L. Turner and D. Miller responded to the scene to interview the three victims. Detectives showed the victims a photo line up which consisted of Griffin's photo. None of the victims identified Griffin as a suspect involved in the robbery.

On 08-06-09 Officer Garris P#5985 conducted a vehicle stop on a 1997 blue 2dr sedan with NV license plate 767-WBL in the area of the Meadows Mall. Officer Garris noted the suspect vehicle matched the exact description of the vehicle driven by Suspect #1 while fleeing the scene of the robbery. Officer Garris' traffic stop was conducted less than 24 hours after the robbery and approximately 5 miles from the robbery location. Officer Garris identified the driver of the vehicle as Ezekiel Davis ID# 2677543. The passenger was identified as Robby Warren ID# 2698782. Davis was arrested for No Driver's License. Warren was released at the scene. The vehicle was sealed and towed to the Quality Towing Seizure pending a Search Warrant.

On 08-07-09 Detective Guyer authored a Search Warrant for the 1997 blue Ford Thunderbird 2dr with NV license plate 767-WBL. The search warrant was signed by Judge Timothy Williams and subsequently served at 1730 hours on 08-07-09. During the execution of the Search Warrant Detective Guyer located a pawn ticket in the name of Ezekiel Davis. Further investigation showed Ezekiel Davis matched the description of one of armed robbers.

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LAS VEGAS METROPOLITAN POLICE DEPARTMENT
DECLARATION OF WARRANT/SUMMONS
Page 3

EVENT: 090805-3569

On 08-12-09 Ezekiel Davis called LVMPD and advised he was the legal owner of the the 1997 blue Ford Thunderbird 2dr with NV license plate 767-WBL. Davis requested the police hold be removed so he could pick up his vehicle. Detective Guyer constructed a photo line up using Davis' most current booking photo. On 08-12-09 Detective Turner conducted a photo line up with victim Houston MacGyver. Upon looking at the photo line-up MacGyver immediately picked Davis out as the suspect who initially approached with a gun and demanded money. MacGyver was 100% certain of his identification. After the photo line-up was conducted Detectives were unable to contact Davis for an interview.

Summary:

All three robbery victims described the suspect's vehicle as blue, 1997 Ford 2dr with NV license plate 767-WBL. The robbery suspect was described as a Black male 5'10", 180. Less than 24 hours after the robbery Officer D. Garriss P# 5968 conducted a traffic stop on a blue, 1997 Ford 2dr with NV license plate 767-WBL. The traffic stop conducted less than 5 miles from the original robbery location. Officer Garriss identified the driver as Ezekiel Davis ID# 2677543. Davis matched the suspect description given by the three victims.

On 08-12-09 Detective Guyer complied a photo line up using Ezekiel Davis's recent photo. Detective Turner met with MacGyver Gale and showed the photo line. Gale immediately picked Davis out as the suspect who initially pointed a gun and him while demanding money. Davis was 100% certain of his identification.

Wherefore, declarant prays that a Warrant of Arrest be issued for suspect EZEKIEL DAVIS on a charge(s) of Robbery With Deadly Weapon, Conspiracy Robbery.

I declare under penalty of perjury under the law of the State of Nevada that the foregoing is true and correct.

Executed on this 20th day of August, 2009.

DECLARANT: 

WITNESS: 

DATE: 08/20/09

RM
MAGED
LJ

CASE NO. C258227

DEPT. NO. 11

ORIGINAL

FILED

DEC - 7 2009

Alan J. P. ...
CLERK OF COURT

IN THE JUSTICE COURT OF LAS VEGAS TOWNSHIP
COUNTY OF CLARK, STATE OF NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

EZEKIEL DAVIS,

Defendant.

Case No. 09F17710X

REPORTER'S TRANSCRIPT
OF
UNCONDITIONAL WAIVER OF PRELIMINARY HEARING

BEFORE THE HONORABLE ERIC A. GOODMAN
JUSTICE OF THE PEACE

Monday, September 21, 2009, 9:00 a.m.

APPEARANCES:

For the State:

JOSHUA TOMSHECK, ESQ.
Deputy District Attorney

For the Defendant:

LESLEY PENA, ESQ.
MICHAEL FELICIANO, ESQ.
Deputies Public Defender

Reported by: RENEE SILVAGGIO, C.C.R. NO. 122

CASE NO. C258227

LEPT. NO. 11

IN THE JUSTICE COURT OF LAS VEGAS TOWNSHIP
COUNTY OF CLARK, STATE OF NEVADA

THE STATE OF NEVADA,

Plaintiff,

Case No. 09F17710X

-vs-

EZEKIEL DAVIS,

Defendant.

REPORTER'S TRANSCRIPT
 OF
UNCONDITIONAL WAIVER OF PRELIMINARY HEARING

BEFORE THE HONORABLE ERIC A. GOODMAN
 JUSTICE OF THE PEACE

Monday, September 21, 2009, 9:00 a.m.

APPEARANCES:

For the State:

JOSHUA TOMSHECK, ESQ.,
 Deputy District Attorney

For the Defendant:

LESLEY PENA, ESQ.,
 MICHAEL FELICIANO, ESQ.,
 Deputies Public Defender

Reported by: REBEK SILVAGGIO, C.C.R. NO. 122

MR. TOMSHECK: Judge, that is all correct.

One thing I wanted to add to the record, the robbery
 count that the defendant pleads to in District Court will comprise
 all three of the stated victims, which are currently in the
 Criminal Complaint.

And for the record, that's Shane Velez, Luke Jaylins and
 there is actually a typographical error as to the victim in
 Count II. It reads Gale MacGyver. The victim's actually --
 actually the first name is MaGyver, last name is Gale. The names
 have been transposed.

THE COURT: Okay.

MR. FELICIANO: That's correct.

(Solito voce at this time.)

THE COURT: Sir, do you understand that negotiation this
 morning, because it sounds like you didn't?

Do you have some questions about that?

THE DEFENDANT: Yeah, I have some questions about it.
 I'm not all the way understanding it.

THE COURT: You are not understanding the naming of the
 three victims under one count?

THE DEFENDANT: Yeah. That's pretty much saying at
 first --

THE COURT: Well, let's -- what -- you said you talked to

Las Vegas, Clark County, Nevada
 Monday, September 21, 2009, 9:00 a.m.

PROCEEDINGS

THE COURT: Ezekiel Davis, 09F17710X.

This is the time and date set for the Preliminary
 Hearing.

I understand this may be negotiated.

MR. FELICIANO: Yeah. Your Honor, today this case is
 resolved.

THE COURT: Today, Mr. Davis will unconditionally waive
 his Preliminary Hearing.

In District Court he will plead guilty to one count of:
 Conspiracy to commit robbery and one count of: Robbery, no use of
 a deadly weapon.

The State will have no opposition to those counts running
 concurrent.

And the State will have no opposition to those -- this
 case running concurrent with two other cases, which Mr. Davis was
 just revoked on, and those case numbers are C248776X and C243460X.

Also at the time of sentencing the State will make no
 recommendation as to the amount of time to be imposed in this
 case.

you Public Defender. Let's have you talk to your Public Defender,
 okay, let's have you talk to your Public Defender and see if you
 can get this straightened out. Okay?

(Solito voce at this time.)

MS. PENA: I think we have solved that, Judge.

THE COURT: Sir, do you understand the negotiation?

THE DEFENDANT: Yes.

THE COURT: Okay. Have you had a chance to talk to your
 attorney about the negotiation?

THE DEFENDANT: Yes.

THE COURT: Is it a negotiation you wish to accept?

THE DEFENDANT: Yes.

THE COURT: Is that a yes?

THE DEFENDANT: Yes.

THE COURT: Okay. Is anybody forcing you to take this
 negotiation?

THE DEFENDANT: No.

THE COURT: Is anybody threatening you or members of your
 family to take this negotiation?

THE DEFENDANT: Yes.

THE COURT: Okay. And you do want to accept it; is that
 correct?

THE DEFENDANT: Yes.

1 THE COURT: Okay. I just have some concerns because you
2 are hesitating. I just want to make sure are doing this freely
3 and voluntarily.

4 THE DEFENDANT: I'm -- there is no -- is there any way we
5 could hold this off the prelim?

6 Can we hold the Preliminary Hearing off a week?

7 THE COURT: They're ready to go. So the State has their
8 witnesses here.

9 It's the time set for the preliminary hearing. It's
10 going to be put on today.

11 THE DEFENDANT: Well --

12 THE COURT: Are you telling me you don't want to accept
13 the offer or are you telling me you do want to accept the offer?

14 Like, I have to make sure, as a judge, that you are doing
15 this freely and voluntarily.

16 I can't bind you up unless you are doing this freely.

17 THE DEFENDANT: I can't have any more time to figure this
18 out? That's what I'm saying. I can't have no more time?

19 MR. FELICIANO: I think the issue, Judge, as -- speaking
20 with Mr. Tomscheck --

21 THE DEFENDANT: I'm not trying to prolong anything. I
22 would just like a little bit more time, please.

23 MR. FELICIANO: Well, Mr. Tomscheck has his witnesses
24 here, and I believe he wants to proceed if it's not resolved.

25 And if we do proceed, it's my understanding Mr. Tomscheck

1 will resend any offers in this case.

2 THE COURT: You are an adult. You understand the
3 position you are in.

4 If they put the prelim on, the deal goes away.

5 I'm willi- -- I'm not willing to give you additional time.

6 They're here. They're ready to go.

7 So what I will do is I will put the prelim on. You are
8 going to lose the offer. That's the only thing I can do.

9 I mean, I can't extend this. I can't give you additional
10 time to think about it. Either you accept the deal today or we
11 put the prelim on today.

12 THE DEFENDANT: All right. I'll accept the deal.

13 THE COURT: All right. Sir, you have the right to a
14 Preliminary Hearing.

15 You have the right to confront and cross-examine the
16 witnesses against you; the right to take the stand and present
17 evidence on your own behalf.

18 By unconditionally waiving your Preliminary Hearing today
19 you are giving up these rights.

20 Do you understand that?

21 THE DEFENDANT: Yes.

22 THE COURT: When you get to District Court you may enter
23 your plea pursuant to the offer.

24 If you should change your mind you will go directly to

25 trial District Court. You will not come back to Justice Court for

1 a Preliminary Hearing.

2 Do you understand that?

3 THE DEFENDANT: Yes.

4 THE COURT: It appearing to me from the Complaint on file
5 herein the following crimes have been committed: Count I,
6 conspiracy to commit robbery; Count II, robbery with use of a
7 deadly weapon; Counts III and IV, attempt robbery with use of a
8 deadly weapon.

9 And the defendant having unconditionally waived his right
10 to a Preliminary Hearing, I hereby --

11 THE DEFENDANT: Hold on. They -- they added something
12 right there.

13 THE COURT: No, no, no. You get bound up on all the
14 charges. You are only pleading to a certain count. However, when
15 you get bound up to the District Court you get bound up on all the
16 counts.

17 Do you understand that?

18 MR. FELICIANO: The counts will be dismissed after you
19 are sentenced in the other case.

20 You are going to plead to the two and then the other ones
21 are going to stay there until you are sentenced and they will be
22 dismissed, so --

23 THE DEFENDANT: Plead to the two and the other ones will
24 be dropped?

25 MR. FELICIANO: Yes.

1 THE COURT: You are going to get a copy of the Guilty
2 Plea Agreement when you sign it. You actually enter your plea in
3 the District Court. You don't understand it down here.

4 Do you understand that?

5 THE DEFENDANT: Right.

6 THE COURT: So today you are not entering a plea on the
7 record. You are going to do that in District Court.

8 So today I'm going to bind you up on all the charges that
9 you have in the District Court.

10 Once you are in the District Court you are going to sign
11 a Guilty Plea Agreement and it's going to go on the record at that
12 point. Okay?

13 So today I have to bind you up on all the counts.

14 Do you understand that?

15 MR. FELICIANO: And then when we got to District Court
16 everything will be in writing as to what you are pleading to and
17 the whole negotiation. Everything I just stated will be in
18 writing at that point.

19 THE DEFENDANT: Yes.

20 THE COURT: All right. I will state that again.

21 Count I, conspiracy to commit robbery; Count II, robbery
22 with use of a deadly weapon; Counts III and IV, attempt robbery
23 with use of a deadly weapon.

24 And the defendant, having unconditionally waived his
25 right to a Preliminary Hearing, I hereby order said defendant to

1 to said answer to said charges in the Eighth Judicial District
2 Court, State of Nevada, County of Clark, on the following date and
3 time --

4 THE CLERK: September 29th, 10:30, lower level
5 arraignment, District Court Track V.

6 MR. FELICIANO: Thank you, Judge.

7
8
9 Proceedings concluded.)
10
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13 ATTEST: Full, true and accurate transcript of proceedings.
14
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Renee Schlegel
RENEE SCHLEGEL
Clerk of District Court

JUSTICE COURT, LAS VEGAS TOWNSHIP
CLARK COUNTY, NEVADA

STATE OF NEVADA,
Plaintiff,

vs.

DAVIS, EZEKIEL,
Defendant(s)

FILED

SEP 23 2009

[Signature]
CLERK OF COURT

) District Court Case No.: *C259227*

) Justice Court Case No.: 09F17710X

9/29/09
1030

IV

CERTIFICATE

I hereby certify the foregoing to be a full, true and correct copy of the proceedings as the same appear in the above case.

Dated this September 21, 2009

[Signature]

Justice of the Peace, Las Vegas Township

RECEIVED

SEP 23 2009

CLERK OF THE COURT

EXHIBIT B

1 AJOC

FILED

SEP 30 2009

Alma L. Blum
CLERK OF COURT

2
3 ORIGINAL

4 DISTRICT COURT

5 CLARK COUNTY, NEVADA

6 EXHIBIT B

7 Part 1

8 THE STATE OF NEVADA,

9 Plaintiff,

CASE NO. C243460

10 -vs-

DEPT. NO. XX

11 EZEKIEL F. DAVIS

12 #2677543

13 Defendant.

14
15 ORDER FOR REVOCATION OF PROBATION AND
16 AMENDED JUDGMENT OF CONVICTION
17


18
19 The Defendant previously appeared before the Court with counsel and entered a
20 plea of guilty to the crime of ATTEMPT LARCENY FROM THE PERSON (Category D
21 Felony/Gross Misdemeanor) in violation of NRS 193.330, 205.270; thereafter, on the
22 16th day of June 2008, the Defendant was present in Court for sentencing with his
23 counsel, wherein the Court adjudged the Defendant guilty under the felony statute of
24 said offense, suspended the execution of the sentence imposed and granted probation
25 to the Defendant.
26

27 THEREAFTER, a parole and probation officer provided the Court with a written
28 statement setting forth that the Defendant has, in the judgment of the parole and


1 probation officer, violated the conditions of probation; and on the 16th day of September,
2 2009, the Defendant appeared in court with his counsel, MICHAEL WILFONG, Deputy
3 Public Defender, and pursuant to a probation violation hearing/proceeding, and good
4 cause appearing to amend the Judgment of Conviction; now therefore,
5

6 IT IS HEREBY ORDERED that the probation previously granted to the Defendant
7 is revoked; and IT IS FURTHER ORDERED that the original sentence is MODIFIED to
8 a MAXIMUM of THIRTY (30) MONTHS with a MINIMUM Parole Eligibility in TWELVE
9 (12) MONTHS in the Nevada Department of Corrections (NDC); with SEVENTY-EIGHT
10 (78) DAYS credit for time served.
11

12
13 DATED this 28 day of September, 2009
14

15 
16 DAVID T. WALL
17 DISTRICT JUDGE
18
19
20

21 CERTIFIED COPY
22 DOCUMENT ATTACHED IS A
23 TRUE AND CORRECT COPY
24 OF THE ORIGINAL ON FILE
25
26

27 
28 CLERK OF THE COURT
29
30

FEB 28 2017

LAS VEGAS METROPOLITAN POLICE DEPARTMENT
DECLARATION OF ARREST

ID#: NEW-

EVENT: 080315-3896

TRUE NAME:	DATE OF ARREST:	TIME OF ARREST:
DAVIS, EZEKIEL F.	03-15-08	2330

OTHER CHARGES RECOMMENDED FOR CONSIDERATION:

Possession of Narcotics Paraphernalia

THE UNDERSIGNED MAKES THE FOLLOWING DECLARATION SUBJECT TO THE PENALTY FOR PERJURY AND SAYS: That I am a peace officer with the Las Vegas Metropolitan Police Department, Clark County, Nevada, being so employed for a period of 2.6 years.

That I learned the following facts and circumstances which lead me to believe that DAVIS, EZEKIEL F. committed (or was committing) the offense of Larceny from a Person (Victim over 60) and PCS-Marijuana with intent to sell at the location of 3900 S. LV Blvd LV, NV 89109.

That the offense occurred at approximately 2300 hours on the 15 day of March, 2008.

On 03-15-08, at 2304 hrs, I Officer R. Rundell, P#8719, marked unit, 1M12, was dispatched to the Luxor Hotel and Casino, located at 3900 S. Las Vegas Blvd for a Larceny from a person call. Details stated that in the parking garage on the westside of the Luxor, an unknown BMA had taken a wallet from the PR and ran away. While enroute details were updated that Security had found the suspect and had taken him into custody.

Upon my arrival, I made contact with Security Officer David Wheeler, of the Luxor. Wheeler had the BMA suspect in-custody on the lower level of the west parking garage. The BMA was identified through a NV-ID card as Ezekiel Davis, DOB 04-28-89. I then took custody of Davis and escorted him to the front of my patrol vehicle. While escorting Davis, he stated, "Lets get this over. Just book me." I then asked Davis if I could search him. Davis stated, "Yeah, you can." While searching Davis I located in his left front pant pocket a clear sandwich baggy containing an unknown green leafy substance. This substance is known to me through my training and experience as marijuana. In Davis left front key hole pant pocket, I located 16 clear orange baggies, that were placed inside of a slightly larger clear baggy. These type of baggies are commonly used for the sells of illegal narcotics. Inside of Davis wallet, which was located in his right rear pocket, I located a clear orange baggy containing a green leafy substance that appeared to be marijuana. The baggy inside of his wallet is identical to the 16 that I had located in his other pocket. In Davis right front pocket I located \$408.00. Three \$100.00 bills, three \$20.00 bills, one \$10.00 bill, five \$5.00 bills, and thirteen \$1.00 bills. All of these bills appeared as if they had been shoved in his pocket and were crumpled up. The bills were in no numerical order. Some of the bills were almost falling out of Davis pocket. It should also be noted that there was no money in Davis wallet.

I read Davis his Miranda rights, from an LVMPD Miranda card at 2320 hrs. Post Miranda I asked Davis, "What's going on tonight?" Without stating anything about the Larceny call, Davis replied, "I had found a wallet on the ground. And the lady wasn't anywhere near it. I just picked it up and she started yelling." Later after Davis was told of his charges, he went on to state he new nothing about any old lady. He also stated he new nothing about what was going on.

LAS VEGAS METROPOLITAN POLICE DEPARTMENT
DECLARATION OF ARREST CONTINUATION
Page 2

ID#: NEW-

EVENT: 080315-3896

Shortly after questioning Davis, Security brought the PR to my location. The PR was identified as Banjank Balzer, DOB 12-12-46. Balzer is 62 yoa. Balzer stated that she was leaving work at the Luxor and waiting for her husband to pick her up. Balzer was waiting on the walk way to the westside parking garage on the second level. While rummaging through her purse for her phone, she had pulled out her wallet. Balzer was holding on to her wallet when Davis, who is unknown to her, approached her, grabbed her wallet and ran. Balzer then began screaming for help and running after Davis. Unknown citizens gave chase. While Davis was running he discarded the wallet, which was found by Balzer. Balzer stated that after finding the wallet she noticed the cash from the wallet was missing. Balzer stated that she had three \$100.00 bills, three \$20.00 bills, and some 10's, 5's and 1's. Balzer stated she believed the total amount to be around \$400.00.

I then spoke with Security Officer Wheeler. Wheeler stated he responded to the west parking garage. There he was advised by a citizen that Davis was hiding underneath a car on the lower level of the garage. Shortly thereafter Wheeler located Davis hiding underneath a Blue Kia, NV plate 983UZR, parked in Row 2-C. Wheeler advised Davis to come from under the vehicle. Wheeler then placed him in handcuffs. I arrived shortly after.

Security was able to get video of the incident. Security stated the video shows Davis taking the wallet from Balzer and then running away. It also shows him with two other BMA's, but not able to tell if they were involved. Security burned a copy of the incident and released it to me. Later when I asked Davis who the other two BMA's were, he stated he had no idea what I was talking about. Davis did seem concerned about the other two. Davis asked, "So the other two going to be booked too?". I asked Davis if he did not know the two, then why was he so concerned about what happens to them. Davis did not reply.

Due to the fact that Davis did admit to being there during the commission of the crime, Balzer being over 60, the fact that he had the same amount of money that was stolen and bill count, and that the video shows Davis taking the wallet and running, he was placed under arrest for Larceny from a Person (Victim over 60). Davis was also charged with PCS-Marijuana due to all of the narcotic related items I located on his person. The combination of all of those items together are common in the sell of narcotics. I then transported Davis to CCDC where he was booked accordingly.

At CCDC the Green leafy substance was tested ODV positive for a total of 4.1 grams of Marijuana. The cash was released to Balzer. The Marijuana and Video were impounded at SCAC.

Wherefore, Declarant prays that a finding be made by a magistrate that probable cause exists to hold said person for preliminary hearing (if charges are a felony or gross misdemeanor) or for trial (if charges are misdemeanor).

Declarant


R. RUNDELL P#8719

ARREST REPORT

08F05705X/6

☐ City☒ County☒ Adult☐ Juvenile

Sector/Beat M4

ID/EVENT# 2677543	ARRESTEE'S NAME DAVIS, EZEKIEL F. (Last, First, Middle)		S.S.# 530-45-3710	
ARRESTEE'S ADDRESS (Number, Street, City, State, Zip Code) 4912 CINNAMON SPIKE NLV, NV 89031				
CHARGES: LARCENY FROM PERSON, VICTIM OVER 60 NRS: 205.270 PCS MARIJUANA WITH INTENT TO SELL NRS: 453.337				
OCURRED:	DATE 031508	DAY OF WEEK SAT	TIME 2330	LOCATION OF ARREST (Number, Street, City, State, Zip Code) 3900 S LAS VEGAS BLVD LAS VEGAS, NV 89109
RACE B	SEX M	D.O.B. 042889	HT 601	WT 190
HAIR BRO		EYES BRO		PLACE OF BIRTH LAS VEGAS, NV

CIRCUMSTANCES OF ARREST

OFFICER INVOLVED:

R. Rundell, P#8719, call sign 1M12

VICTIM:

Balzer, Banjank

DOB: 12/12/46

Contact phone: (702) 369-5355

CONTACT:

Wheeler, David

DOB: 01/21/54

Ph: 457-5131

PROPERTY IMPOUNDED and
RECOVERED:

Pkg 1, Item 1, Owner 1
 Quantity of 1: \$408 dollars in cash
 (3)- three one hundred dollar bills
 (3)- three twenty dollar bills
 (1)- one ten dollar bill
 (5)- five, five dollar bills
 (13)- thirteen one dollar bills

The cash was recovered from Davis and
 released to Balzer

Pkg 2, Item 2, Owner 2
 Quantity 1: one clear baggy containing 16
 clear orange baggies

Pkg 2, Item 3, Owner 2
 (1) one clear orange baggy containing
 0.9 grams of ODV positive marijuana

CONFIDENTIAL

ARRESTING OFFICER(S)	P#	APPROVED BY	CONNECTING RPTS. (Type or Event Number)
RUNDELL	8719	Approved 03/16/08 2300 Hours Lt. D. Cavalieri P#3876	080315-3896, TCR, DOA, RFP, Witness List, ICR A pg and B pg, Property report, marijuana checklist, 2 Voluntary Statements

CONTINUATION REPORT

ID/Event Number: 2677543

Page 2 of

PROPERTY IMPOUNDED:

Pkg 2, Item 4, Owner 1

(1) one clear sandwich baggy containing
3.9 grams of ODV positive marijuana

Pkg 3, Item 5

(1) one DVD video of incident

All property except for cash was
impounded at SCAC

DETAILS:

On 03/15/08 at 2304 hours, I, Officer R. Rundell, P#8719, marked unit 1M12, was dispatched to the Luxor Hotel and Casino located at 3900 S. Las Vegas Blvd., for a larceny from a person call. Details stated that in the parking garage on the west side of the Luxor, an unknown BMA had taken a wallet from the P/R and ran away. While en route, details were updated that security had found the suspect and had taken him into custody.

Upon my arrival, I made contact with the Security Officer David Wheeler of the Luxor. Wheeler had the BMA suspect in custody on the lower level of the west parking garage. The BMA was identified through a Nevada ID card as Ezekial Davis, DOB 04/28/89. I then took custody of Davis and escorted him to the front of my patrol vehicle. While escorting Davis, he stated, "Let's get this over, just book me". I then asked Davis if I could search him. Davis stated, "yeah, you can". While searching Davis, I located in his left front pant pocket, a clear sandwich baggy containing unknown green leafy substance. This substance is known to me through my training and experience as marijuana.

In Davis' left front keyhole pant pocket, I located 16 clear orange baggies that were placed inside of a slightly larger clear baggy. These type of baggies are commonly used for the sales of illegal narcotics. Inside of Davis' wallet which was located in his right rear pocket, I located a clear orange baggy containing a green leafy substance that appeared to be marijuana. The baggy inside of his wallet was identical to the 16 that I located in his other pocket. In Davis' right front pocket, I located \$408.00, three hundred bills, three twenty dollar bills, one ten dollar bill, five five dollar bills and thirteen one dollar bills. All of these bills appeared as if they had been shoved in his pocket and were crumpled up. The bills were in no numerical order; some of the bills were almost falling out of Davis' pocket. It should also be noted that there was no money in Davis' wallet.

I read Davis his Miranda rights from a LVMPD Miranda card at 2320 hours. Post Miranda, I asked Davis, "What's going on tonight?". Without stating anything about the larceny call, Davis replied, "I had found a wallet on the ground and the lady wasn't anywhere near it, I just picked it up and she started yelling". Later after, Davis was told of his charges. He went onto state he knew nothing about any old lady. He also stated he knew nothing about what was going on. Shortly after questioning Davis, security brought the P/R to my location. The P/R was identified as Banjank Balzer, DOB 12/12/46. Balzer is 62 years of age.

LAS VEGAS METROPOLITAN POLICE DEPARTMENT
CONTINUATION REPORT

ID/Event Number: 2677543

Page 3 of

Balzer stated that she was leaving work at the Luxor and waiting for her husband to pick her up. Balzer was waiting on the walkway to the west side of the parking garage on the second level. While rummaging through her purse for her phone, she had pulled out her wallet. Balzer was holding her wallet in her hand when Davis, who is unknown to her, approached her, grabbed her wallet and then ran. Balzer then began screaming for help and running after Davis. Unknown citizens then gave chase. While Davis was running, he discarded the wallet which was found by Balzer. Balzer stated that after finding the wallet, she noticed the cash from the wallet was missing. Balzer stated that she had three one hundred dollar bills, three twenty dollar bills and some tens, fives and ones. Balzer stated she believed the total amount to be around \$400.00.

I then spoke with Security Officer Wheeler. Wheeler stated he responded to the west parking garage after receiving the call from his dispatch of the larceny. Upon his arrival, he was advised by a citizen that Davis was hiding underneath a car on the lower level of the garage. Shortly thereafter, Wheeler located Davis hiding underneath a blue Kia, Nevada plate 983UZR, which was parked in row 2C. Wheeler advised Davis to come from under the vehicle. Wheeler then placed him in handcuffs; I arrived shortly after.

Security was able to get video of the incident. Security stated the video shows Davis taking the wallet from Balzer and then running away. It also shows him with two other BMA's, but not able to tell if they were involved. Security burned a copy of the incident and released it to me on DVD. Later when I asked Davis who the other two BMA's were, he stated he had no idea what I was talking about. Davis then seemed to be concerned about the other two, asking, "so, are the other two going to be booked to?". I asked Davis if he did not know the other two, then why was he so concerned about what happens to them. Davis did not reply.

Due to the fact that Davis did admit to being there during the commission of the crime, Balzer being over 60 years of age, the fact he had the same amount of money that was stolen and bill count and that the video shows Davis taking the wallet and running, he was placed under arrest for Larceny From a Person, Victim over 60. Davis was also charged with PCS marijuana, due to all of the narcotic related items I located on his person. The combination of those items together are commonly used for the sales of narcotics. I then transported Davis to CCDC where he was booked.

While at CCDC, the green leafy substance was tested by me and showed positive for a total of 4.1 grams of marijuana. The cash that I recovered from Davis' right front pocket was released to Balzer at the scene. The marijuana and video were impounded at SCAC. Both Balzer and Wheeler completed voluntary statements.

RR/sj7000 Records

Job #97381

Date and time of dictation: 03/16/08 @ 0817 hrs

Date and time transcribed: 03/16/08 @ 2227 hrs

cc: R. Rundell / SCAC

1 16

1 CASE NO.: C243460

2 DEPT NO.: 6

FILED

MAY 29 1 56 PM '08

3
4 IN THE JUSTICE COURT OF LAS VEGAS TOWNSHIP
5 COUNTY OF CLARK, STATE OF NEVADA
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CLERK OF THE COURT

-ooo-

ORIGINAL

8 THE STATE OF NEVADA,
9 Plaintiff,
10 vs.
11 EZEKIEL F. DAVIS,
12 Defendant.

CASE NO. 08F05705X

14 REPORTER'S TRANSCRIPT
15 OF
16 UNCONDITIONAL WAIVER OF PRELIMINARY HEARING

17 BEFORE THE HONORABLE NANCY OESTERLE
18 JUSTICE OF THE PEACE

19 Thursday, April 17, 2008
20 10:15 a.m.

21 APPEARANCES:

22 For the State: ALEXANDER CHEN, ESQ.
23 Deputy District Attorney

24 For the Defendant: MICHAEL WILFONG, ESQ.
25 Deputy Public Defender

Reported by: KRISTINE A. FLUKER, CCR NO. 403

RECEIVED
MAY 29 2008
CLERK OF THE COURT

1 LAS VEGAS, CLARK COUNTY, NV., THURS., APRIL 17, 2008
10:15 A.M.

2 -oOo-
P R O C E E D I N G S

3
4 THE COURT: Ezekiel Davis. That's
5 E-z-e-k-i-e-l, Davis, 08F05705X.

6 MR. WILFONG: Yes. And there's also going to
7 be -- there's actually three. My apologies. Lisa Hurt
8 and Franklin McDaniel.

9 THE COURT: Okay. Franklin McDaniel. Where
10 is Franklin? That's 08F06684X.

11 And the last one is Lisa Hurt, H-u-r-t.
12 That's 08F06712X. Where is Lisa?

13 Okay. Let's start first with Franklin. What
14 are we doing on Franklin's case?

15 MR. WILFONG: Yes, Your Honor. Today
16 Mr. Franklin is going to be unconditionally waiving his
17 right to a preliminary hearing. In District Court he
18 will be pleading guilty to one count of attempted grand
19 larceny. The parties have stipulated to a gross
20 misdemeanor and have stipulated to six months flat time
21 concurrent with any other cases.

22 MR. CHEN: That's correct, Your Honor.

23 THE COURT: Okay. What are we doing on
24 Ezekiel Davis?

25 MR. WILFONG: Yes, Your Honor, today

1 Mr. Davis will be unconditionally waiving his right to
2 a preliminary hearing. In District Court he's going to
3 plead guilty to one count of attempted larceny from the
4 person, a wobbler. The parties have agreed to
5 stipulate to felony treatment. The Government will not
6 oppose probation. If he is successful, he will be
7 allowed to withdraw his plea and plead guilty to the
8 gross misdemeanor with credit for time served.

9 MR. CHEN: That is correct, Your Honor. And
10 also the State retains the right to argue for terms and
11 conditions of probation.

12 MR. WILFONG: Yes, Your Honor.

13 THE COURT: Okay. And what are we doing on
14 Lisa Hurt's case?

15 MR. WILFONG: Yes, today Ms. Hurt will be
16 unconditionally waiving her right to a preliminary
17 hearing. In District Court she will be pleading guilty
18 to one count of possession of a controlled substance.
19 If she has no prior felonies, the State will not oppose
20 3363 treatment.

21 MR. CHEN: That's correct, Judge.

22 THE COURT: Okay. Franklin, did you hear the
23 negotiations?

24 DEFENDANT MCDANIEL: Yes, ma'am.

25 THE COURT: And is that what you'd like to

1 do?

2 DEFENDANT MCDANIEL: Yes, ma'am.

3 THE COURT: Ezekiel, can you pronounce your
4 name. Do you have a nickname?

5 DEFENDANT DAVIS: Ezekiel.

6 THE COURT: Is that your nickname?

7 DEFENDANT DAVIS: Zeek.

8 THE COURT: Great. We're going by that.

9 Zeek, did you hear the negotiations?

10 DEFENDANT DAVIS: Yes, ma'am.

11 THE COURT: And is that what you'd like to
12 do?

13 DEFENDANT DAVIS: Yes, ma'am.

14 THE COURT: Lisa, did you hear the
15 negotiations?

16 DEFENDANT HURT: Yes.

17 THE COURT: And is that what you'd like to
18 do?

19 DEFENDANT HURT: Yes.

20 THE COURT: Do all three of you understand
21 that by entering into these negotiations you are
22 waiving, by that I mean you're giving up, your right to
23 have a preliminary hearing scheduled for today, which
24 means you're giving up your right to cross-examine the
25 witnesses the State can call against you and challenge

1 their evidence, you're also giving up your right to
2 subpoena witnesses to testify for you, and you're
3 giving up your right to testify on your own behalf for
4 the purpose of your preliminary hearing only?

5 Franklin, is that right?

6 DEFENDANT MCDANIEL: Yes.

7 THE COURT: What about you, Zeek?

8 DEFENDANT DAVIS: Yes, ma'am.

9 THE COURT: What about you, Lisa?

10 DEFENDANT HURT: Yes.

11 THE COURT: Do each of you understand it's an
12 unconditional waiver, which means it's a permanent
13 waiver of your right to have that preliminary hearing?

14 So if you go to District Court and you change
15 your mind and decide you don't wish to go forward with
16 your plea bargain, you'd then go directly to jury trial
17 on the original charges. You would not come back to
18 Justice Court to appear before me for the purpose of
19 having your preliminary hearing on this case.

20 Do you understand that, Franklin?

21 DEFENDANT MCDANIEL: Yes, ma'am.

22 THE COURT: What about you, Zeek?

23 DEFENDANT DAVIS: Yes, ma'am.

24 THE COURT: What about you, Lisa?

25 DEFENDANT HURT: Yes.

1 THE COURT: And knowing all of that, you
2 still want the plea bargain, Franklin?

3 DEFENDANT MCDANIEL: Yes, ma'am.

4 THE COURT: What about you, Zeek?

5 DEFENDANT DAVIS: Yes, ma'am.

6 THE COURT: What about you, Lisa?

7 DEFENDANT HURT: Yes.

8 THE COURT: It appears to me from the
9 Complaint on file herein that crimes have been
10 committed. As to Franklin: one count of burglary.

11 As to Zeek: one count of larceny from the
12 person; one count of possession of a controlled
13 substance with intent to sell.

14 As to Lisa: one count of trafficking a
15 controlled substance.

16 Each defendant has unconditionally waived
17 their right to a preliminary hearing. I hereby order
18 the said defendants be held to answer to said charges
19 in the Eighth Judicial District Court, State of Nevada,
20 in and for the County of Clark.

21 Your next court date, Franklin, is --

22 THE CLERK: April 23rd, 9:00 a.m., District
23 Court 1, initial appearance, lower level.

24 THE COURT: And it's the same exact date for
25 Zeek.

1 And then, Lisa, your date is different. Your
2 date is --

3 THE CLERK: April 30th, 9:00 a.m., District
4 Court 24, initial appearance, lower level.

5 THE COURT: Wait for all your paperwork.

6 MR. WILFONG: Your Honor, one last matter as
7 to Mr. Davis. He is on house arrest right now. I
8 believe he needs the paperwork to get that lifted.

9 THE COURT: Was that part of the negotiation
10 or is that a request now?

11 MR. WILFONG: That is our request at this
12 time, Your Honor.

13 THE COURT: I don't have reports from house
14 arrest as to how he's doing or if he's been making his
15 payments or anything. And I show --

16 MR. WILFONG: Well, he's here, Your Honor.

17 THE COURT: I see that.

18 DEFENDANT DAVIS: I have receipts.

19 THE COURT: I'm sorry, what? I can't hear
20 you.

21 DEFENDANT DAVIS: I have receipts for my
22 payments for house arrest. I have my receipts.

23 THE COURT: I gave him an in-custody bindover
24 date. Without a report and since Intake recommended
25 against a release, I did not follow that. I gave him

1 'house arrest. I'm inclined to leave him on there until
2 he shows up on the next court date and enters his plea,
3 and then the State probably won't oppose it then
4 anyway.

5 Is that right, Mr. Chen?

6 MR. CHEN: That's correct, Judge.

7 THE COURT: Okay. He has in-custody date for
8 the 23rd, next Wednesday.

9 MR. WILFONG: Okay. Thank you, Your Honor.

10

11 -oOo-

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13 ATTEST: FULL, TRUE AND ACCURATE TRANSCRIPT OF
14 PROCEEDINGS.

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18 KRISTINE A. FLUKER, CCR NO. 403

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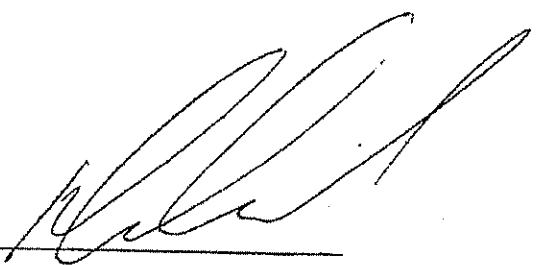
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AFFIRMATION

Pursuant to NRS 239B.030

The undersigned does hereby affirm that the
preceding bindover filed in District Court Case
No. C243460 does not contain the Social Security Number
of any person.

Dated this 20th day of May, 2008.



KRISTINE A. FLUKER, CCR. NO. 403

JOCP

FILED

MAY 07 2010

Agnes L. Johnson
CLERK OF COURT

DISTRICT COURT
CLARK COUNTY, NEVADA

EXHIBIT B
Part 2

THE STATE OF NEVADA,

Plaintiff,

-vs-

EZEKIEL F. DAVIS
#2677543

Defendant.

CASE NO. C262058

DEPT. NO. XII

JUDGMENT OF CONVICTION
(PLEA OF GUILTY)

The Defendant previously appeared before the Court with counsel and entered a plea of guilty to the crime of POSSESSION OF FIREARM BY EX-FELON (Category B Felony) in violation of NRS 202.360; thereafter, on the 27TH day of April, 2010, the Defendant was present in court for sentencing with his counsel R. ROGER HILLMAN, Deputy Public Defender, and good cause appearing,

THE DEFENDANT IS HEREBY ADJUDGED guilty of said offense and, in addition to the \$25.00 Administrative Assessment Fee and a \$150.00 DNA Analysis Fee including testing to determine genetic markers, the Defendant is sentenced as follows: TO A MAXIMUM of THIRTY-SIX (36) MONTHS with a MINIMUM parole

1 eligibility of TWELVE (12) MONTHS in the Nevada Department of Corrections (NDC),
2 to run CONCURRENT with case C243460; with ZERO (0) DAYS credit for time
3 served.
4

5
6 DATED this 10 day of May, 2010.

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9 MICHELLE LEAVITT
10 DISTRICT JUDGE
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CERTIFIED COPY
DOCUMENT ATTACHED IS A
TRUE AND CORRECT COPY
OF THE ORIGINAL ON FILE

[Signature]
CLERK OF THE COURT

FEB 28 2017

09PCH 1278

Henderson Police Department

223 Lead St. Henderson, NV 89015

Page 1 of 2

Declaration of Arrest

DR# 09-16672

FH# 09

Arrestee's Name: Davis, Ezekiel F

Date of Arrest: 08/13/2009

Time of Arrest: 1411

Charge	Degree	NR5/HMC
Poss Stolen Property/Firearm-F	Felony	205.275.2C
Convicted Person-possess Firearm-F	Felony	202.360

THE UNDERSIGNED MAKE THE FOLLOWING DECLARATIONS SUBJECT TO THE PENALTY FOR PERJURY AND SAYS: That I, Clinton Campbell am a peace officer with the Henderson PD, Clark County, Nevada, being so employed since 06/18/2007. That I learned the following facts and circumstances which led me to believe that the above named subject committed (or was committing) the above offense/offenses at the location of 6200 South Eastern Avenue Las Vegas Nevada 89044, and that the offense occurred at approximately 1411 hours on 08/13/2009.

Details of Probable Cause

On 08/13/09 at about 1300 hours I, Officer C. Campbell (#1543), was dispatched to the Big Lots located at the corner of Eastern Avenue and Windmill, in Las Vegas, to assist Lieutenant M. Cassell (#632) and Acting Sergeant Z. Simpson (#689) in reference to a suspicious vehicle.

Lt. Cassell advised that at about 1300 hours he saw two black males in the parking lot that matched the description of a suspect of a drive-by shooting that occurred in Henderson (see DR# 09-16660 for further details). Lt. Cassell advised that both subjects were next to a white sedan that matched the vehicle description used in the drive-by shooting. He advised that they went to another vehicle (a black Saturn sedan bearing NV 817VSS) and were doing something under the hood of the Saturn. He said that both subjects then left in the Saturn going north on Eastern.

Sgt. Simpson arrived to assist Lt. Cassell as they observed the vehicle stop in the Davis Cemetery located at 6200 South Eastern Avenue, in Las Vegas. contact was made with both subjects, Ezekiel Davis (DOB 04/28/89) and Sean Rose (DOB 01/04/89) who identified themselves by means of thier NV identification.

Lt. Cassell and Sgt. Simpson advised that both Ezekiel and Sean advised that they did not know about any drive-by shooting, but Ezekiel admitted that he had a gun hidden in the Saturn and that it was his and that his finger prints would be found on the gun. Ezekiel also stated that Sean had nothing to do with the gun. Sean advised that the gun was hidden near the battery under the hood of the Saturn. Sean also stated that he was the registered owner of the Saturn and gave consent to Officers to search the vehicle.

A routine records check of Ezekiel revealed that he was a convicted felon and on probation for Attempted Theft.

Upon my arrival at the Saturn I located the handgun, a black Semi-Automatic Smith & Wesson MP.45 with serial # MPY8157, wedged between the battery and the air filter under the hood of the vehicle. Digital photos were taken of the vehicle and the location of the handgun and later downloaded into digital evidence.

A routine records check of the Handgun revealed that it was stolen, as confirmed by dispatch. I entered the gun's information in this report to have it removed from the NCIC system as stolen.

It should be noted that there was no round in the chamber of the handgun and there was a magazine inside the gun that had 5 .45 caliber rounds inside of it. The handgun, the magazine, and the rounds were later impounded as evidence at the West Substation.

Clinton Campbell

Declarant's Name

Henderson Police Department

223 Lead St. Henderson, NV 89015

Page 2 of 2

Declaration of Arrest Continuation Page

DR# 09-16672

FH# 09

Arrestee's Name: Davis, Ezekiel F

Details of Probable Cause (Continued)

Due to the fact that Ezekiel admitted the stolen handgun was his, he was placed under arrest for Possession of Stolen Firearm (NRS 205.275-2C), and Convicted Person-Possess Firearm (NRS 202.360).

Wherefore, Declarant prays that a finding be made by a magistrate that probable cause exists to hold said person for preliminary hearing (if charges are a felony or gross misdemeanor) or for trial (if charges are a misdemeanor).

Clinton Campbell

Declarant's Name

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TRAN

CASE NO. C262058

FILED 42

MAR 4 2 41 PM '10

IN THE JUSTICE'S COURT OF HENDERSON TOWNSHIP
COUNTY OF CLARK, STATE OF NEVADA

STATE OF NEVADA,

Plaintiff,
vs.

EZEKIEL F. DAVIS,

Defendant.

CASE NO. 09FH1597X

REPORTER'S TRANSCRIPT

OF

UNCONDITIONAL WAIVER OF PRELIMINARY HEARING

BEFORE THE HONORABLE STEPHEN L. GEORGE
JUSTICE OF THE PEACE

WEDNESDAY, FEBRUARY 10, 2010

APPEARANCES:

For the State: AGNES BOTELHO, ESQ.
Deputy District Attorney

For the Defendant: BITA KHAMSI, ESQ.
Deputy Public Defender

Reported by: Lisa Brenske, CCR #186

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MAR 04 2010

CLERK OF THE COURT

1 HENDERSON, NEVADA, FEBRUARY 10, 2010, 9:30 a.m.

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3 * * * * *

4
5 THE COURT: Ezekiel Davis, case number
6 09FH1597X.

7 MS. KHAMSI: This matter is negotiated,
8 Your Honor. Mr. Davis is going to be unconditionally
9 waiving his right to a preliminary hearing. He is
10 going to be pleading guilty to the charge of possession
11 of firearm by ex-felon. State is recommending 12 to 36
12 months and will not oppose concurrent time with the
13 time he is serving concurrently.

14 MS. BOTELHO: We also ask he forfeit the
15 weapon.

16 THE COURT: I'm sorry?

17 MS. KHAMSI: He is going to be forfeiting
18 the weapon as part of the negotiations.

19 THE COURT: Oh, okay.

20 Is that your understanding of the
21 negotiations here this morning, sir?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: Do you understand that by
24 accepting those negotiations you will be
25 unconditionally waiving or giving up that right to a

1 preliminary hearing?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: That means you'll be giving up
4 the right to confront and cross-examine any witnesses,
5 the right to present any evidence in your own behalf,
6 the right to testify or not testify, it would be your
7 choice. Do you understand those rights?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: Do you understand should you
10 change your mind about these negotiations this matter
11 would simply be set for a trial, it would not be sent
12 back here for a preliminary hearing due to the fact
13 you're unconditionally waiving or giving up your right
14 to a preliminary hearing this morning.

15 Knowing all that do you still wish to
16 unconditionally waive your right to a preliminary
17 hearing this morning?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: Therefore it appearing to me
20 from the complaint on file herein that a crime has been
21 committed, to wit: Ex-felon in possession of a
22 firearm, and the defendant named herein, Ezekiel Davis,
23 having unconditionally waived his right to a
24 preliminary hearing. I hereby order said defendant be
25 held to appear to said charges in the Eighth Judicial

1 District Court, State of Nevada, County of Clark.

2 Mr. Davis, you're scheduled to appear in
3 District Court for your initial arraignment on --

4 THE CLERK: February 25th, 10:30 a.m.,
5 lower level, this case is tracked to Department 12.

6

7 (The proceedings concluded.)

8

9

* * * * *

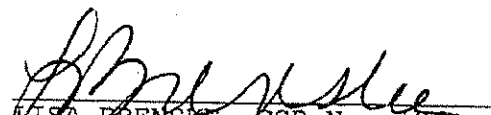
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11 ATTEST: Full, true and accurate
12 transcript of proceedings.

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LISA BRENSKE, CSR No. 186

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EXHIBIT C

1 AJOC

FILED

SEP 30 2009

Oliver & Blum
CLERK OF COURT

2 ORIGINAL

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5 DISTRICT COURT
6 CLARK COUNTY, NEVADA

EXHIBIT C

7
8 THE STATE OF NEVADA,

9 Plaintiff,

CASE NO. C248776

10 -vs-

DEPT. NO. V

11 EZEKIEL DAVIS
12 aka Ezekiel F. Davis
13 #2677543

14 Defendant.

15
16 ORDER FOR REVOCATION OF PROBATION AND
17 AMENDED JUDGMENT OF CONVICTION
18


19 The Defendant previously appeared before the Court with counsel and entered a
20 plea of guilty to the crime of ATTEMPT TO COMMIT THEFT (Category D Felony/Gross
21 Misdemeanor) in violation of NRS 193.330, 205.0832, 205.0835; thereafter, on the 20th
22 day of November 2008, the Defendant was present in Court for sentencing with his
23 counsel, thereupon using the presentence report from C243460; wherein the Court
24 adjudged the Defendant guilty under the felony statute of said offense, suspended the
25 execution of the sentence imposed and granted probation to the Defendant.
26
27
28


1 THEREAFTER, a parole and probation officer provided the Court with a written
2 statement setting forth that the Defendant has, in the judgment of the parole and
3 probation officer, violated the conditions of probation; and on the 17th day of September,
4 2009, the Defendant appeared in court with his counsel, JOSIE T. BAYUDAN, Deputy
5 Public Defender, and pursuant to a probation violation hearing/proceeding, and good
6 cause appearing to amend the Judgment of Conviction; now therefore,
7

8 IT IS HEREBY ORDERED that the probation previously granted to the Defendant
9 is revoked; and IT IS FURTHER ORDERED that the original sentence is MODIFIED to
10 a MAXIMUM of THIRTY (30) MONTHS with a MINIMUM Parole Eligibility in
11 TWELVE (12) MONTHS in the Nevada Department of Corrections (NDC), to run
12 CONCURRENT with case C243460; with NINETY-THREE (93) DAYS credit for time
13 served.
14
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16
17 DATED this 21 day of September, 2009

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20 
21 JACKIE GLASS
22 DISTRICT JUDGE
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CERTIFIED COPY
DOCUMENT ATTACHED IS A
TRUE AND CORRECT COPY
OF THE ORIGINAL ON FILE


CLERK OF THE COURT

FEB 28 2017

ORIGINAL

20

1 JOC

2 DAVID ROGER
3 Clark County District Attorney
4 Nevada Bar #002781
5 200 Lewis Avenue
6 Las Vegas, Nevada 89155-2212
7 (702) 671-2500
8 Attorney for Plaintiff

FILED

JAN 5 4 18 PM '09

E. J. Smith
CLERK OF THE COURT

DISTRICT COURT
CLARK COUNTY, NEVADA

8 THE STATE OF NEVADA,

9 Plaintiff,

10 -vs-

11 EZEKIEL DAVIS, aka
12 Ezekiel F. Davis,
13 #2677543

14 Defendant.

Case No: C248776

Dept No: III

15 JUDGMENT OF CONVICTION
16 (PLEA OF GUILTY)

17 The Defendant previously appeared before the Court with counsel and entered a plea
18 of guilty to the crime(s) of ATTEMPT TO COMMIT THEFT (Category D Felony/Gross
19 Misdemeanor), in violation of NRS 193.330, 205.0832, 205.0835; thereafter, on the 20th day
20 of November, 2008, the Defendant was present in court for sentencing with his counsel,
21 MISTI ASHTON, Deputy Public Defender, and good cause appearing,

22 THE DEFENDANT IS HEREBY ADJUDGED guilty of said offense(s) ATTEMPT
23 TO COMMIT THEFT (Category D Felony) and, COURT ORDERED: in addition to the
24 \$25.00 Administrative Assessment Fee and a \$150.00 DNA Analysis fee including testing to
25 determine genetic markers, Defendant SENTENCED to a MAXIMUM of THIRTY-SIX
26 (36) MONTHS and a MINIMUM of TWELVE (12) MONTHS in the Nevada Department of
27 Corrections (NDC); sentence SUSPENDED; placed on PROBATION for an indeterminate
28 period not to exceed THREE (3) YEARS with the following CONDITIONS:

1. Abide by any curfew imposed by the Division of Parole and Probation

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CLERK OF THE COURT

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- 1 2. Enter and complete the Drug Court program
- 2 3. Enter and complete any counseling programs deemed necessary.
- 3 4. Maintain full-time employment or full-time student status
- 4 5. Complete ten (10) hours of community service work per month
- 5 6. Submit to random urinalysis

6 DATED this 21st day of December, 2008.

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8 AWH
DISTRICT JUDGE CS

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TRUE AND CORRECT COPY
OF THE ORIGINAL ON FILE

John S. Johnson
CLERK OF THE COURT

FEB 28 2017

jr

AFFIDAVIT

08-6853

1 State of NEVADA }

2 County of Clark }

ss:

3 A. Antoniewicz, being first duly sworn, deposes and says:

4 That he is a Police Detective with the North Las Vegas Police Department, City of North
5 Las Vegas, County of Clark, State of Nevada, being so employed for a period of 6 years,
6 assigned to investigate the crime(s) of **Attempt Robbery**, committed on or about April 15, 2008,
7 which investigation has developed **Ezekiel Davis** as the perpetrator(s) thereof.

8 That Affiant developed the following facts in the course of the investigation of said crime,
9 to wit: On March 15, 2008, at about 2100 hours, Officer Wall (p#1951), responded to 3512 Chaps
10 Ranch in reference to a report of an attempt robbery. The victim, Tracy Smith, told Officer Wall the
11 following: at about 2045 hours, he walked out of the Port of Subs located at 1306 West Craig road
12 toward his vehicle, a black Hummer H3, which was parked in front of the Port of Subs. Smith noticed
13 a black male walking east bound on the sidewalk toward him. Smith opened his driver's door and
14 heard footsteps approaching quickly from behind. Smith got inside the car, shut and locked the door
15 just as the black male grabbed his exterior driver side door handle. The black male grabbed the
16 handle with his right hand and began banging on the driver's side window with his left fist. The black
17 male yelled "give me all your fucking money!" The black male appeared to be standing on the driver's
18 side foot rail and continued banging and yelling at Smith. The black male saw Smith reach his keys
19 toward the ignition and yelled "if you start this car, I'll fucking kill you!" Smith could not see the
20 suspect's right hand and feared for his own safety. Smith started the car's engine, quickly backed out
21 of the parking space and sped west bound through the shopping center. Smith saw the suspect run
22 toward a dark-colored small sports car and then lost sight of him. Smith described the black male as
23 being about 17 or 18 years of age with braided hair hanging down to his chin. The black male wore
24 a black, white, and purple baseball cap and jacket with dark colored pants. Smith told Officer Wall
25 that he would be able to identify the black male if he saw him again.

26 Affiant went to the Port of Subs and checked the area for video surveillance. There was no video
27 surveillance available at the Port of Subs. However, Affiant went to the Lucky's grocery store, 1324
28

1 West Craig road, which is at the west end of the Port of Subs shopping center. Affiant spoke with
2 Lucky's Organized Retail Crime Specialist Thomas Andersson. He showed Affiant video surveillance
3 that covered the time of the crime. On the video, Affiant noticed the following: a black male entered
4 the store on March 15, 2008, at about 2035 hours. The male was wearing a black, white and purple,
5 baseball cap and jacket and he appeared to have braided hair. The black male was preceded in
6 entering the store (about five seconds) by another black male who was wearing blue jeans and a
7 white shirt. Both black males walked toward the restroom area where the black male with the white
8 shirt entered the bathroom and the black male with the baseball cap waited nearby. When the black
9 male exited the bathroom, both black males exited the store together (about 2045 hours). Upon
10 exiting the store, the black male with the baseball cap walked east bound (out of the camera's view)
11 toward the area of the Port of Subs and the black male with the white shirt walked south toward the
12 parking lot and eventually got into a black four door vehicle. Minutes later, at about 2047 hours, the
13 black male with the baseball cap ran back into the camera's view and got into the same black vehicle.
14 The vehicle then went east bound through the parking lot and exited the camera's view.
15 On the video surveillance, Affiant noticed that the black, white and purple colored jacket worn by the
16 suspect had a picture of "Marvin the Martian" (cartoon character) on the back. Andersson made
17 Affiant a copy of the surveillance video which included still photos and Affiant later booked it into
18 evidence at the North Las Vegas Police Department.
19 Due to the unique design on the black male's jacket, Affiant printed still photos from the video
20 surveillance and visited the local high schools in the northern part of North Las Vegas. No one was
21 able to positively identify any of the black males on the pictures. However, on April 4, 2008, Detective
22 Freeman (p#1570) was contacted by Cheyenne High School (3200 West Alexander) personnel, as
23 Affiant was unavailable, and advised that a student matching the description of the suspect was at
24 school and wearing a "Marvin the Martian" jacket. Detective Freeman went to the school and made
25 contact with the student, Darvell Washington. Detective Freeman did not speak to Washington about
26 the incident as he only photographed him for identification purposes. The pictures showed that
27 Washington had braided hair and the jacket matched the jacket on the video surveillance.
28 On April 17, 2008, Affiant met with Smith (victim) and showed him a photo lineup that Affiant

1 obtained from Clark County Juvenile Hall. The photo lineup contained Washington in the lower left
2 hand corner. Smith looked at the lineup and eventually picked the person pictured in the middle of
3 the right hand side.

4 On May 22, 2008, Affiant went to Cheyenne High School to speak with Washington. Before
5 requesting Washington's presence, Affiant showed the still photos to Clark County School District
6 Police Officer Grimes. Affiant asked him if he believed the person in the photo was Washington.
7 Officer Grimes said it was not Washington, but he recognized the black male in the white shirt. Officer
8 Grimes did not remember the black male's name, but later advised Affiant it was Joseph Preston,
9 who previously attended the school. Officer Grimes provided Affiant with Preston's personal
10 information that showed his birth date was 04/17/1988 and his residence address was 5438 Forsythia
11 Court in North Las Vegas. A records check through the Nevada Department of Motor Vehicles
12 database revealed a driver license in the name of Joseph Preston (#1402292801). The license
13 showed Preston with the same birth date and address as that provided by Officer Grimes. The picture
14 on the driver license closely resembled that of the black male wearing the white shirt on the video
15 surveillance.

16 On May 29, 2008, Affiant went to 5438 Forsythia Court. As Affiant approached the residence, Affiant
17 noticed a black four door Mercury Marquis (NV/672use) parked on the driveway. A records check on
18 the plate showed it was registered to Joseph Preston with a birth date of 04/17/1988. Affiant
19 eventually made contact with and spoke to Preston in the presence of Detective Owens (p#1173).
20 Detective Owens recorded this conversation with a digital audio recorder. Affiant later had the
21 conversation copied to a compact disc and Affiant booked the disc into evidence at the North Las
22 Vegas Police Department. Preston told Affiant the following: he was at the Lucky's store with his
23 friend Ezekiel Davis, who was drunk. When they exited the store, Davis told him to go to his
24 (Preston's) vehicle. Davis then approached the Hummer (Smith's vehicle) and jumped on it. However,
25 the vehicle drove away. Davis then got back into Preston's vehicle and started to say "off the wall"
26 stuff. Preston and Davis then left the area. Preston said Davis did not have a gun and did not get any
27 money from the incident. Preston said Davis got arrested later that same day because he robbed
28 someone at the Luxor casino. Preston said Davis was about 18 years of age and his birthday was

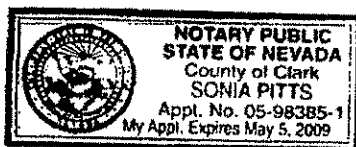
1 April 28. Preston said he knew Davis from school, but did not know where he lived.
2 Affiant went to Cheyenne High School and received the latest information they had on an Ezekiel
3 Davis. The information provided showed an Ezekiel F. Davis with a birth date of 04/28/1989.
4 A records check on Davis using the date of birth showed he had an identification card through
5 Nevada Department of Motor Vehicles (#1402503578). Further records showed Davis was arrested
6 on March 15, 2008, for larceny from person (victim over 65) and possession of controlled substance
7 with intent to sell through Las Vegas Metropolitan Police Department's jurisdiction.
8 A photo lineup was created using Davis' identification card picture and five other pictures of persons
9 with similar facial and hair features. Davis was in the number two position. Affiant showed this photo
10 lineup to Smith (victim) and he immediately pointed to Davis and said this was definitely the person
11 that attempted to rob him. Affiant had Smith complete and sign the photo lineup and Affiant later
12 booked it into evidence at the North Las Vegas Police Department. On July 23, 2008, at about 0930
13 hours, Detective Lettieri (p#1522) and Affiant went to Davis' last known address, 4912 Cinnamon
14 Spice Court in North Las Vegas. Affiant attempted to make contact with Davis with negative results.

15 WHEREFORE, Affiant prays that a Warrant of Arrest be issued for **Ezekiel Davis** on the
16 charge of **Attempt Robbery**.

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A. Antoniewicz, Affiant

22 SIGNED and SWORN to before me by
23 A. Antoniewicz this 24 day of July, 2008.

24
25
26 Notary Public In and For Said County and State



DEPARTMENT 2
CASE NO. C248776

FILED ORIGINAL

IN THE JUSTICE'S COURT OF NORTH LAS VEGAS TOWNSHIP
COUNTY OF CLARK, STATE OF NEVADA

Nov 18 3 40 PM '08

-000-

E. J. [Signature]
CLERK OF THE COURT

THE STATE OF NEVADA,
Plaintiff,
vs.
EZEKIEL DAVIS,
Defendant.

Case No. 08FN1680X

REPORTER'S TRANSCRIPT OF
UNCONDITIONAL WAIVER OF PRELIMINARY HEARING

BEFORE RICHARD GLASSON,
JUSTICE OF THE PEACE PRO TEM

WEDNESDAY, OCTOBER 15, 2008
9:30 A.M.

APPEARANCES:

For the State: Amy Ferreira, Esq.
Deputy District Attorney

For the Defendant: Travis Raymond, Esq.
Deputy Public Defender

Reported by: Norma Jean Silverman, RPR, RMR
NV. C.C.R. No. 572

NORMA JEAN SILVERMAN CCR 572 (702) 451-5607

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NOV 18 2008
CLERK OF THE COURT

NORTH LAS VEGAS, CLARK COUNTY, NEVADA
WEDNESDAY, OCTOBER 15, 2008, 9:30 A.M.

* * * * *
P R O C E E D I N G S

THE COURT: State of Nevada versus
Ezekiel Davis, Case No. 08FN1680X.

Mr. Davis is present in custody.

MR. RAYMOND: He is, judge.

Travis Raymond on his behalf.

This matter has been resolved.

Today Mr. Davis will unconditionally
waive his right to a preliminary hearing.

In district court he will be pleading
guilty to one count of attempt theft. That is a
wobbler.

The State will retain the right to argue
at rendition of sentence.

THE COURT: Okay. Ms. Ferreira, that's
your understanding of the negotiations as well?

MS. FERREIRA: Yes, your Honor, that's
correct.

THE COURT: Thank you.

Mr. Davis, did you understand the
negotiations that have been stated on the record

1 MR. RAYMOND: No.

2 THE COURT: Sounds like it's either a
3 felony or a gross.


4 MR. RAYMOND: It's the judge's decision
5 like we talked about.

6 THE DEFENDANT: Okay.

7 THE COURT: Thank you, sir. Go ahead
8 and have a seat.

9
10 * * * * *

11
12 ATTEST: Full, true, and accurate transcript of
13 proceedings.

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21 Norma Jean Silverman, RPR, RMR
22 NV. C.C.R. No. 572
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